Supreme Court, U.S.
FILED

No. (1)

95-497 SEP 25 1995

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1994

JOHN M. SILVESTRI,

Petitioner,

vs.

MARK J. CHRISTMAN
and JOAN P. FELDMAN,

Respondents.

Writ Of Certiorari
To The United States Court
Of Appeals For The Third Circuit

PETITION FOR WRIT OF CERTIORARI

JOHN M. SILVESTRI, ESQ.
Petitioner
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QUESTIONS PRESENTED FOR REVIEW

I. WAS IT IMPERMISSIBLE TO IMPOSE SANCTIONS UNDER BANKRUPTCY RULE 9011 (WHICH PARALLELS CIVIL RULE 11) UPON AN ATTORNEY FOR FILING AN INVOLUNTARY BANKRUPTCY PROCEEDING IN WHICH HIS CLIENT WAS THE SUCCESSFUL PARTY, BY VIRTUE OF THE INVOLUNTARY DEBTOR IN BANKRUPTCY CONVERTING THE INVOLUNTARY BANKRUPTCY PROCEEDING TO A VOLUNTARY BANKRUPTCY PROCEEDING WITH THE EXPRESS APPROVAL OF THE BANKRUPTCY COURT?

II. ASSUMING ARGUENDO IT WAS PERMISSIBLE TO IMPOSE SANCTIONS UPON A SUCCESSFUL PARTY'S ATTORNEY, FOR SIGNING AND FILING THE PAPER WHICH INITIATED THE SUCCESSFUL PROCEEDING, DID THE BANKRUPTCY COURT EXCEED ITS AUTHORITY IN:

A. IMPOSING ATTORNEY PRACTICE REGULATION SANCTIONS (1) WHICH REGULATE YOUR PETITIONER'S FUTURE MANNER OF PRACTICE IN THE BANKRUPTCY COURT (WITHOUT NOTICE), AND (2) WHICH ATTACH THE COMPLETION OF NON-EXISTENT CONTINUING LEGAL EDUCATION COURSES, TO PROSPECTIVE ATTORNEY-CLIENT RELATIONS; AND

B. IMPOSING SANCTIONS FOR OTHER CONDUCT NOT THE SUBJECT OF ANY MOTION OR NOTICED HEARING, AND UTILIZING 28 U.S.C. §1927 WITHOUT NOTICE THAT THIS LIABILITY THEORY FOR SANCTIONS WAS EITHER BEING PURSUED BY THE SANCTION MOVANTS OR BEING CONSIDERED BY THE COURT?

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REFERENCE TO THE UNOFFICIAL REPORT DELIVERED IN THE COURTS BELOW

The only opinion delivered by a court below was by the United States Bankruptcy Court for the Western District of Pennsylvania, at Bankruptcy No. 88-01186 JKF, and Motion Nos. 88-5359-M and 89-1373-M. This opinion was not published in any official reporter. The slip opinion is reproduced in the Appendix at Pages 10a-44a.

CONCISE STATEMENT OF THE GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED

Review is sought of two Judgments entered in the United States Court of Appeals for the Third Circuit dated May 30, 1995 (Appendix, Pages 1a-4a).

Rehearing of these two Third Circuit Judgments was requested, and denied by Orders dated June 27, 1995 (Appendix, Pages 5a-8a).

The statutory provision that confers jurisdiction to review these judgments by writ of certiorari is 28 U.S.C. §2101(c).

STATUTES AND RULES INVOLVED IN THIS CASE

This case involves Bankruptcy Rule 9011(a), 28 U.S.C. §1927, 28 U.S.C §157(a) & (d), Local Bankruptcy Court Rule 9010.1, Local District Court Rule 1(b), (c) & (e), and Local District Court Rule 22(I) & (V), which state:

> Bankruptcy Rule 9011. Signing and Verification of Papers
>
> (a) Signature. Every petition, pleading, motion and other paper served or filed in a case under the Code on behalf of a party represented by an attorney, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney of record in the attorney's individual name, whose office address and telephone number shall be stated. A party who is not represented by an attorney shall sign all papers and state the party's address and telephone number. The signature of an attorney or a party constitutes a certificate that the attorney or party has read the document; that to the

best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation or administration of the case. If a document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the person whose signature is required. If a document is signed in violation of this rule, the court on motion or on its own initiative, shall impose on the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney's fee.

* * * * *

28 U.S.C. §1927. Counsel's liability for excessive costs.

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

* * * * *

28 U.S.C. § 157. Procedures.

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

...

(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so

withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

* * * * *

Local Bankruptcy Court Rule 9010.1 ADMISSION TO PRACTICE

A. Attorneys who are admitted to the bar of the United States District court for the Western District of Pennsylvania pursuant to District court Rule 1 are admitted to the bar of this court.

B. No one, other than an attorney regularly admitted to practice in this court, shall appear in any proceeding on behalf of any trustee, creditor or other party in interest, except by special leave of a bankruptcy judge.

C. District court Rule 22 of the United States District court for the Western District of Pennsylvania shall apply as to discipline of attorneys, and amendments to said rule promulgated by the said court shall also automatically apply.

* * * * *

Local District Court Rule 1(b), (c) & (e)

RULE 1. ATTORNEYS

...

(b) Eligibility. Any person who is eligible to be admitted to practice before the Supreme Court of Pennsylvania, and who is a resident of the Western District of Pennsylvania is eligible for admission to the Bar of this Court.

(c) Any person who is a member in good standing of the Bar of the Supreme Court of Pennsylvania, or a member in good standing of the Supreme Court of the United States, or a member in good standing of any United States District Court, may be admitted to practice before the Bar of this Court, but subject to the provisions of sub-paragraph (e).

...

(e) Attorneys Who Do Not Maintain An Office In This District. Any attorney who does not maintain an office in this District for the practice

of law shall, in each proceeding in which he appears, have associate counsel residing in and maintaining an office in the district, whose appearance and office address shall also be entered of record, upon whom or at whose office all notices, rules and pleadings may be served in accordance with the Federal Rules of Civil Procedure and with the rules and practice of this Court; and the attendance of any such associate counsel upon any motion, hearing or taking of testimony shall be a sufficient appearance for the party or parties whom he so represents.

* * * * *

Local District Court Rule 22(I) & (V)

Rule 22 - RULES OF DISCIPLINARY ENFORCEMENT

I. INTRODUCTION

A. Responsibility of Court

The United States District Court for the Western District of Pennsylvania, in furtherance of its inherent power and responsibility to supervise the conduct of attorneys who are admitted to practice before it, or admitted for the purpose of a particular proceeding (pro

hac vice), promulgates the following Rules of Disciplinary Enforcement superseding all of its rules pertaining to disciplinary enforcement heretofore promulgated.

B. Adoption of Code of Professional Responsibility

Acts or omissions by an attorney admitted to practice before this court, individually or in concert with others, which violate the Code of Professional Responsibility adopted by this court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The Code of Professional Responsibility adopted by this court is the Code of Professional Responsibility adopted by the Supreme Court of Pennsylvania as amended from time to time by the state court, except as otherwise provided by specific rule of this court.

C. Sanctions for Misconduct

For misconduct defined in these rules, any attorney admitted to practice before this court may be disbarred, suspended from practice before this court, reprimanded or subjected to such other

disciplinary action as the circumstances may warrant.

D. Admission to Practice as Conferring Disciplinary Jurisdiction

Whenever an attorney applies to be admitted or is admitted to this court for purposes of a particular proceeding (pro hac vice), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this court for any alleged misconduct of that attorney arising in the course of or in the preparation for such proceeding.

.....

V. DISCIPLINARY PROCEEDING

A. Reference to Counsel

When misconduct or allegations of misconduct which, if substantiated, would warrant discipline on the part of an attorney admitted to practice before this court shall come to the attention of a judge of this court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these rules, the Chief Judge shall refer the matter to counsel for investigation and the prosecution of a formal

disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

B. Recommendation of Counsel

Should counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the respondent-attorney because sufficient evidence is not present, or because there is pending another proceeding against the respondent-attorney, the disposition of which in the judgment of the counsel should be awaited before further action by this court is considered or for any other valid reason, counsel shall file with this court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise setting forth the reasons therefor.

C. Order to Show Cause

To initiate formal disciplinary proceedings, counsel shall obtain an order of this court upon a showing of probable cause requiring the respondent-attorney to show cause within thirty (30) days after service of that order upon that attorney, personally

or by mail, why the attorney should not be disciplined.

D. Hearings

Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard in mitigation, the Chief Judge shall set the matter for prompt hearing before one or more judges of this court, provided, however, that if the disciplinary proceeding is predicated upon the complaint of a judge of this court the hearing shall be conducted before a panel of three other judges of this court appointed by the Chief Judge, or if there are less than three judges eligible to serve or the Chief Judge is the complainant, by the Chief Judge of the Court of Appeals. Where a judge merely refers a matter and is not involved in the proceeding, he shall not be considered a complainant.

The judge or judges to whom a disciplinary proceeding is assigned by the Chief Judge may order and conduct a further hearing, or take testimony, or hear argument, and make a recommendation to the Board of Judges. The Board, after consideration of the

recommendation, shall enter such order, as it shall determine by a majority vote of the active judges in service at the next meeting of the Board, including dismissal of the charges, reprimand, suspension for a period of time, disbarment, or such action as may be proper.

All such proceedings shall be conducted, as the court shall order, by an attorney of the Office of Disciplinary Counsel of the Supreme Court of Pennsylvania, or by one or more members of the bar of this court, subject to the conditions set forth in Section IX.

STATEMENT OF THE CASE

The basis of jurisdiction in the court of first instance, the United States Bankruptcy Court for the Western District of Pennsylvania, is 28 U.S.C. §§157 and 1334.

1. The filing of an involuntary bankruptcy petition.

Your Petitioner was the attorney for the HAKIMS (the "Clients"), who alleged they were creditors of VIRGINIA MANSIONS APARTMENTS, INC. (the "Debtor"). Your Petitioner signed and filed an involuntary bankruptcy petition on behalf of his Clients against the Debtor on April 29, 1988 (Appendix, Pages 86a-89a).

In response to the filing of the involuntary bankruptcy petition, the VIRGINIA MANSIONS CONDOMINIUM ASSOCIATION (the "ASSOCIATION") filed a Motion to

Dismiss the involuntary bankruptcy (Appendix, Pages 89a-99a). This Motion to Dismiss, alleged that the involuntary petition was "filed...to protect the Hakims...and to delay" a state court action; (Appendix, Pages 96a-97, paragraph 16).

There was a hearing on the ASSOCIATION'S Motion to Dismiss the involuntary bankruptcy, and at this hearing, **the involuntary bankruptcy was converted to a voluntary Chapter 7 bankruptcy**. This was on the oral motion of ROBERT O. LAMPL (LAMPL), the owner of the Debtor, **approved by the bankruptcy court**, and **with the consent of the attorneys for the ASSOCIATION**, the party which originally moved to dismiss the involuntary bankruptcy, **with the consent of the bankruptcy Trustee**, MR. BERNSTEIN,

and **with the consent of the attorney for other creditors**, MR. FEDERLINE. The relevant transcript is as follows:

> MR. LAMPL: I am making a suggestion that we could truncate this process quite a bit since I think the trustee has a serious interest in pursuing these indemnifications and so forth. **If I were to follow the court's suggestion that I** become the responsible officer and **step into the shoes of the debtor, convert this to a voluntary case Chapter 7, then I believe Mr. Silvestri's problems about whether he is a proper debtor or not or petitioning creditors would be academic** other than the issue of whether this stuff was filed in good faith by following the sanctions. ... [Appendix, Page 175a, emphasis supplied.]
>
> * * * * *
>
> ...**That would obviate the whole question of whether this was proper or improper and voluntary and whether or not their [the Hakims'] debts were liquidated and disputed and all those ancillary issues**...[Appendix, Page 176a, emphasis supplied.]

* * * * *

THE COURT: ...Mr. Lampl's oral motion -- I take it it was your motion to substitute yourself for Mr. [Gary] Hakim at this point in time.

MR. LAMPL: I am willing to do so.

THE COURT: Mr. Lampl's motion to substitute as the designated representative of the involuntary debtor in lieu of Gary Hakim is granted. [Appendix, Page 191a.]

* * * * *

THE COURT: Then the next question before I get to that that I wish to address is whether or not this case ought to be converted voluntarily to a voluntary Chapter 7. Mr. Bernstein, do you have any reason to see why it should not?

MR. BERNSTEIN: Your Honor, to facilitate all matters I have no objection to it.

THE COURT: Mr. Silvestri?

MR. SILVESTRI: I have no objection.

THE COURT: Your clients are in accord and you have no objection to conversion of a voluntary Chapter 7 case?

MR. SILVESTRI: Yes, Your Honor.

THE COURT: Yes, they are in accord?

MR. SILVESTRI: My clients do not object to converting the case from an involuntary to a voluntary.

THE COURT: All right. Mr. Christman?

MS. FELDMAN: Your Honor, if I may. Subject to our objections in that we would like to pursue our motion to dismiss in terms of damages the association has suffered up until this time. We would have no other objection to this being a voluntary Chapter 7.

THE COURT: All right. All pending motions for sanctions with regard to the good faith filing will survive the conversion of this case to a voluntary Chapter 7.

Mr. Federline, do you have a position you want to state for the record?

> MR. FEDERLINE: I have no objection, Your Honor.
>
> **THE COURT: <u>Then the involuntary debtor's motion to convert this case to a voluntary Chapter 7 is granted.</u>** ... [Appendix, Pages 192a-194a, emphasis supplied.]

2. The motions for sanctions.

LAMPL then filed a Motion For Sanctions And Request For Referral To Justice Department (Appendix, Pages 302a-310a) against Your Petitioner and his Clients under 11 U.S.C. section 303(i) and Bankruptcy Rule 9011. LAMPL requested that sanctions be imposed for the filing of the involuntary bankruptcy to which, he, as the Debtor's chief operating officer, had just acceded by converting the involuntary bankruptcy to a voluntary bankruptcy.

The ASSOCIATION then amended its Motion to Dismiss the involuntary

bankruptcy to claim sanctions against Your Petitioner and his Clients under Bankruptcy Rule 9011 (Appendix, Pages 312a-313a), even though it had just consented to the involuntary bankruptcy going forward as a voluntary bankruptcy.

3. Bankruptcy Court's decision on the motions for sanctions.

After a series of hearings on the Motions for sanctions, **the Bankruptcy Court concluded that the filing of the involuntary bankruptcy petition was in violation of Bankruptcy Rule 9011** (see the December 22, 1992 Bankruptcy Court Opinion, Appendix, Pages 45a-49a). **This was despite the consent of the Debtor, and all parties, to the Debtor proceeding into voluntary bankruptcy.** Immediate monetary sanctions totalling $85,249.85 for the attorney fees and costs of the

ASSOCIATION and LAMPL, throughout the involuntary and voluntary bankruptcy proceedings, were imposed by the Bankruptcy Court Orders dated December 22, 1992 (Appendix, Page 45a) and January 28, 1993 (Appendix, Page 54a). The Bankruptcy Court Order dated December 22, 1992, at paragraphs 7 and 8, also included provision for supplemental sanctions, as follows:

> 7. It is **FURTHER ORDERED** that John M. Silvestri and Elias J. Hakim, Jr., shall pay to the Clerk of the Bankruptcy Court a fine to be determined by the court pursuant to this court's inherent power to sanction the conduct of those appearing before it. To this end it is **ORDERED** that **on or before January 31, 1993,** John M. Silvestri and Elias J. Hakim, Jr., shall file with the Clerk of the Bankruptcy Court affidavits attaching
>
> a. authentic copies of their tax returns for the period January 1, 1989, through December 31, 1991;

b. Income statements, profit and loss statements and balance sheets for the period January 1, 1989, through September 30, 1992;

c. K-1s, W-2s, 1099s and any other evidence of income for the period January 1, 1989, through September 30, 1992;

d. a current accounts receivable aging schedule, if applicable.

8. It is **FURTHER ORDERED** that if the documents referred to in ¶7a, b, c, and d are not **timely** filed, the court shall enter an order setting the amount of the fine to be paid to the Clerk of the Bankruptcy Court without further notice or opportunity to be heard.

Thereafter, there were Bankruptcy Court Orders, dated February 26, 1993 (Appendix, Pages 59a-60a) and April 29, 1993 (Appendix, Pages 65a-66a), scheduling a hearing for supplemental sanctions. No scheduling Order put Your Petitioner on notice that anything other

than the previously referenced monetary sanctions were contemplated by the Bankruptcy Court.

The hearing on the supplemental monetary sanctions, or "fines", for Your Petitioner was conducted on August 6, 1993 (Appendix, Pages 314a-403a). Following this hearing, a November 12, 1993 Bankruptcy Court Order (Appendix, Pages 68a-73a) partially suspended Your Petitioner from practicing law, and required Your Petitioner to, inter alia, take three hours of continuing legal education focusing in the area of involuntary bankruptcy (a non-existent area of continuing legal education programming).

Your Petitioner filed a Motion To Alter Or Amend The Judgment (Appendix, Pages 404a-412a) of the November 12, 1993

Bankruptcy Court Order, attacking the authority of the bankruptcy judge to regulate Your Petitioner's practice of law, and attacking the requirement for continuing legal education courses that do not exist. Thereafter, the Bankruptcy Judge issued the December 13, 1993 Bankruptcy Court Order (Appendix, Pages 74a-78a), which, inter alia, eliminated the partial suspension of Your Petitioner practicing law, but created practice regulations upon Your Petitioner, by directing Your Petitioner:

1. To disclose to potential involuntary bankruptcy clients (either creditors or debtors) that Your Petitioner is required to satisfy three hours of continuing legal education focusing on

involuntary bankruptcy (Appendix, Page 76a, paragraph "i"); and

2. To obtain special court permission to represent prospective involuntary petitioning creditor clients or involuntary debtor clients, for so long as the continuing legal education requirement is unfulfilled, if court approved fees will be requested (Appendix, Page 77a-78a, paragraph "ii").

4. Proceedings in the District Court.

Four timely notices of appeal to the District Court were filed from the four monetary judgments (Appendix, Pages 50a-53a) entered in the Bankruptcy Court. The District Court, sua sponte, consolidated these appeals into one

District Court proceeding at No. 93-cv-144.

A fifth timely notice of appeal to the District Court was filed from the December 13, 1993 Bankruptcy Court Order (Appendix, Page 74a) imposing supplemental sanctions. The District Court then entered an Order dated March 15, 1994 (Appendix, Pages 79a-80a) fixing a briefing schedule, and sua sponte, adding the Bankruptcy Trustee, Joseph Bernstein, as a party respondent, in the caption in the District Court. The Bankruptcy Trustee did not participate in the District Court appeal.

When the briefing on the appeal was submitted to the District Court, Your Petitioner filed an Affidavit (Appendix, Pages 413a-425a) concerning the non-existence of continuing legal education

programs focussing on involuntary bankruptcy. Later, while the appeal remained undecided in the District Court, Your Petitioner filed a Supplemental Affidavit (Appendix, Pages 426a-432a), confirming the continuing non-existence of such educational programs.

On July 25, 1994, the District Court entered two Orders (Appendix, Pages 81a-83a) denying the appeals, without opinion. After Your Petitioner filed a timely Notice of Appeal to the Third Circuit Court of Appeals from the District Court proceeding which decided the supplemental sanctions, Your Petitioner filed a Motion For Stay Pending Appeal (Appendix, Page 433a-440a), limited to the supplemental sanctions entered by the Bankruptcy Court in the nature of attorney practice

regulations. The District Court then entered an Order, dated August 1, 1994, granting the stay pending appeal (Appendix, Page 84a).

With respect to the District Court proceeding which consolidated the four monetary judgments, a Motion for Rehearing was filed, and was denied on August 4, 1994 (Appendix, Page 85a).

5. The proceedings in the Third Circuit Court of Appeals.

The Third Circuit Court of Appeals denied the appeals from the District Court, without opinion, (Appendix, Pages 1a-4a), and denied rehearing (Appendix, Pages 5a-8a). After the appeal concerning the supplemental sanctions in the nature of regulating the practice of law was docketed in the Third Circuit, the Bankruptcy Trustee, Joseph

J. Bernstein, by a letter dated August 4, 1994 (Appendix, Page 441a-442a) advised the Court that the Bankruptcy Estate had no interest in this appeal.

While the appeal concerning the four separate monetary judgments was pending in the Third Circuit, there was also pending in the bankruptcy court, separate and distinct proceedings to have the three judgments in favor of LAMPL, and his attorneys, Ashton and Kelly, marked satisfied. This separate and distinct bankruptcy court proceeding was settled, such that those three judgments were marked satisfied. Thereafter, the appeal of those three judgments in the Third Circuit was discontinued as to those three judgments, but proceeded on as to the judgment in favor of CHRISTMAN and FELDMAN.

Thus, Bankruptcy Trustee, BERNSTEIN, and LAMPL, ASHTON and KELLY are not parties to this Petition.

ARGUMENT

The United States Court of Appeals for the Third Circuit has approved such a departure by a lower court, in procedures for imposing sanctions and law practice restrictions upon a member of its bar, as to call for an exercise of this Court's supervision. The lower court's sanctions proceedings, affirmed by the Third Circuit Court of Appeals, is contrary to the intent of decisions of this Court.

I. WAS IT IMPERMISSIBLE TO IMPOSE SANCTIONS UNDER BANKRUPTCY RULE 9011 (WHICH PARALLELS CIVIL RULE 11) UPON AN ATTORNEY FOR FILING AN INVOLUNTARY BANKRUPTCY PROCEEDING IN WHICH HIS CLIENT WAS THE SUCCESSFUL PARTY, BY VIRTUE OF THE INVOLUNTARY DEBTOR IN BANKRUPTCY CONVERTING THE INVOLUNTARY BANKRUPTCY PROCEEDING TO A VOLUNTARY BANKRUPTCY PROCEEDING WITH THE EXPRESS APPROVAL OF THE BANKRUPTCY COURT?

Your Petitioner knows of no decision on Bankruptcy Rule 9011, or Civil

Rule 11, where sanctions were imposed for a successful litigation of the paper filed. Business Guides v. Chromatic Comm., 498 U.S. 533, at 553, 112 L.Ed.2d 1140, at 1160, 111 S.Ct. 922 (1991) is of particular interest because it says:

> ...Rule 11 sanctions are not tied to the outcome of the litigation; the relevant inquiry is whether a specific filing was, if not successful, at least well founded.... [112 L.Ed.2d at 1160.]

In this case, the "specific filing", an involuntary bankruptcy petition (Appendix, Page 86a-88a), was "successful". The outcome of the hearing contesting the bankruptcy filing was the consensual conversion of the involuntary bankruptcy to a voluntary Chapter 7 bankruptcy (Appendix, Page 9a).

II. ASSUMING ARGUENDO IT WAS PERMISSIBLE TO IMPOSE SANCTIONS UPON A SUCCESSFUL PARTY'S ATTORNEY, FOR SIGNING AND FILING THE PAPER WHICH INITIATED THE SUCCESSFUL PROCEEDING, DID THE BANKRUPTCY COURT EXCEED ITS AUTHORITY IN:

A. IMPOSING ATTORNEY PRACTICE REGULATION SANCTIONS (1) WHICH REGULATE YOUR PETITIONER'S FUTURE MANNER OF PRACTICE IN THE BANKRUPTCY COURT (WITHOUT NOTICE), AND (2) WHICH ATTACH THE COMPLETION OF NON-EXISTENT CONTINUING LEGAL EDUCATION COURSES, TO PROSPECTIVE ATTORNEY-CLIENT RELATIONS; AND

B. IMPOSING SANCTIONS FOR OTHER CONDUCT NOT THE SUBJECT OF ANY MOTION OR NOTICED HEARING, AND UTILIZING 28 U.S.C. §1927 WITHOUT NOTICE THAT THIS LIABILITY THEORY FOR SANCTIONS WAS EITHER BEING PURSUED BY THE SANCTION MOVANTS OR BEING CONSIDERED BY THE COURT?

A. ATTORNEY PRACTICE REGULATION ISSUES

A hearing on supplemental sanctions, as proposed by the December 22, 1992 Order (Appendix, Pages 314a-403a), occurred on August 6, 1993. The outcome of this hearing was the imposition of

non-monetary sanctions by a November 12, 1993 Order (Appendix, Pages 68a-73a), which were modified by a final December 13, 1993 Order (Appendix, Pages 74a-78a). The December 13, 1993 Order imposed practice regulations upon Your Petitioner, requiring Your Petitioner:

a. To disclose to potential involuntary bankruptcy clients (either creditors or debtors) that Your Petitioner is required to satisfy three hours of continuing legal education focusing on involuntary bankruptcy (Appendix, Page 76a, paragraph "i"); and

b. To obtain special court permission to represent prospective involuntary petitioning creditor clients or involuntary debtor clients, for so long as the continuing legal

education requirement is unfulfilled, if court approved fees will be requested (Appendix, Pages 77a-78a, paragraph "ii").

1. Determining an attorney's fitness to practice, or placing practice restrictions upon any attorney, is outside the authority of a single judge.

The Bankruptcy Judge lacked authority, under Bankruptcy Rule 9011, to pass upon Your Petitioner's fitness to practice before the Western District Court's Bankruptcy Court unit, and further, lacked authority to regulate Your Petitioner's attorney-client affairs in the practice of law. This is because the intent and purpose of Bankruptcy Rule 9011, being the same as the intent and purpose of District Court Rule 11, is to deter future conduct, not regulate the manner of future practice. See the case

of Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 110 L Ed. 2d 359, 110 S. Ct. 247 (1990), in which it is stated:

> ...It is now clear that **the central purpose of Rule 11 is to deter** baseless filings in the district court... [496 U.S. 393, 110 L E 2d 374, emphasis supplied.]

Nowhere has Your Petitioner found an interpretation of Bankruptcy Rule 9011 that indicated it was to be used by a single judge to pass upon an attorney's fitness or privilege to practice law.

Bar admission and discipline matters are within the purview of local district court rules, which are authorized by 28 U.S.C §2071 and Civil Rule 83. The specific local district court rules here involved are Local District Court Rule 1(b), (c) & (e) (see the text, supra., Pages 7-8), and 22.I & V (see the

text, supra., Pages 8-13). The district court's authority to regulate an attorney's privilege to practice law has been recognized as a legitimate subject of local district court rules. See Frazier v. Heebe, 482 U.S. 641, 96 L. Ed. 2d 557, 107 S.Ct. 2607 (1987), which states:

> We begin our analysis by recognizing that a district court has discretion to adopt local rules that are necessary to carry out the conduct of its business.... This authority includes the regulation of admissions to its own bar...[482 U.S. at 645, 96 L Ed. 2d at 565.]

The relationship of a bankruptcy court to a district court is that a bankruptcy court is a unit of the district court, see 28 U.S.C. §157 (see the text, supra., Pages 5-6).

Local Bankruptcy Rule 9010.1.c (see the text, supra., Page 6) requires that Bankruptcy Judges follow the procedures established by the Local District Court Rules in matters involving discipline.

Local District Court Rule 22.V does not permit an individual judge to impose attorney discipline. Rather, Local District Court Rule 22.V requires the following. A judge, having a complaint concerning discipline, is to refer the complaint to the Chief Judge, who then re-refers any matter, warranting investigation, to appointed disciplinary counsel (see Local Rule 22.V.A, the text, supra., at Pages 10-11). After investigation, disciplinary counsel may make a recommendation for disposition (Local Rule 22.V.B, see the text, supra., Page 11), which may result in the

initiation of formal disciplinary proceedings (Local Rule 22.V.C, see the text, supra., Pages 11-12). Any hearing which occurs is to take place before:

> ...one or more **judges**... provided, however, that if the disciplinary proceeding is predicated upon the complaint of a judge...the hearing shall be conducted before a panel of three **other** judges...appointed by the Chief Judge..." (Local District Court Rule 22.V.D, see the text, supra., Page 12; emphasis and extra emphasis supplied.)

This is an issue of first impression. This Court, in exercising its supervisory authority over inferior courts, must decide whether a single bankruptcy judge may exercise authority to impose disciplinary practice restrictions, in substitution for authority reposed in the full district court, through local rules, which spell

out procedures and mechanisms for attorney discipline.

It is submitted that the intention of the drafters of these Local Rules was, among other things, to guard against the capricious response of an individual judge to the behavior of an attorney found to be personally annoying. An individual judge should not usurp attorney discipline policies and procedures set forth in local rules, by fashioning a myriad of personal practice restrictions, and regulations of attorney-client relations, under the guise of Bankruptcy Rule 9011 or Civil Rule 11.

2. The history of notice through sanctions scheduling orders and the hearing, and the practice restrictions imposed.

As set forth above, the December 22, 1992 Order provided for the imposition of the supplemental sanctions in the nature of "fines" (Appendix, Page 48, paragraph 6). A subsequent February 26, 1993 scheduling Order (Appendix, Pages 59a-60a), confirmed that the issue before the Bankruptcy Court in determining supplemental sanctions was monetary in nature.

Your Petitioner was without notice that his fitness to practice law was in question, or that the bankruptcy court contemplated the imposition of regulations or restrictions on prospective attorney-client relations, or restraints, on Your Petitioner's permission to practice law. This is

borne out in the history of pre-hearing Orders, aforementioned, and the August 6, 1993 hearing transcript (Appendix, Pages 314a-403a).

The permission or license to practice law granted to Your Petitioner by the district court, is a property interest under Pennsylvania state law, which is incorporated into the Local Rules of the district court. See Local District Court Rule 1 (b) and (c), for the source of this property interest, and Board of Regents v. Roth, 408 U.S. 564, 577, 33 L.Ed.2d. 548, 561, 92 S.Ct. 2701 (1972), for the proposition that such a property interest is cognizable.

Requisite notice and an opportunity to be heard attaches to any proceeding affecting such an interest in property; see Memphis Light, Gas & Water Div. v.

Craft, 436 U.S. 1, 9-19, 56 L.Ed.2d. 30, 39-45, 98 S.Ct. 1554 (1978). Local District Court Rule 22.I.B and 22.I.C, provide the standards for discipline, and 22.V provides appropriate procedures for due process. Here, there was no due process afforded in the Bankruptcy Judge's sua sponte proceeding, which placed regulations upon Your Petitioner's permission to practice law in the bankruptcy court.

3. Sanctions must not involve the imposition of conditions or requirements impossible to fulfill.

The availability of bankruptcy courses, focusing upon the very narrow practice area of involuntary bankruptcy, is non-existent. See the Affidavit (Appendix, Pages 413a-425a), which documents the investigation into the availability of continuing legal

education programs in the area of involuntary bankruptcies, and which shows that less than one-half hour of programming for the area of involuntary bankruptcies through ten bankruptcy programs offered by five professional organizations over a six month time period. A Supplemental Affidavit (Appendix, Pages 426a-432a) updated this investigation to report three additional programs in the area of bankruptcy which did not include any portion on the topic of involuntary bankruptcies and a fourth program which included one hour on the topic of involuntary bankruptcies, but this fourth program was a program initiated at the suggestion of the Bankruptcy Judge in this case who imposed the sanctions on Your Petitioner (Appendix, Pages 428a-431a, paragraph 4).

B. THE LACK OF DUE PROCESS IN FINDING LIABILITY FOR SANCTIONS

The ASSOCIATION Motion For Sanctions and the LAMPL Motion For Sanctions claimed sanctions only for the improper filing of the involuntary petition under Bankruptcy Rule 9011 (a rule parallel to Civil Rule 11). However, the December 22, 1992 Bankruptcy Court Opinion recited that sanctions were imposed for alleged conduct, other than for the filing of the involuntary bankruptcy, and under 28 U.S.C. §1927.

At no time was there notice that other conduct would be the basis for imposing sanctions, or that liability for sanctions was being considered under 28 U.S.C. §1927. It was with the filing of the December 22, 1992 Bankruptcy Court Opinion, that Your Petitioner was first made aware that conduct, other than the

signing and filing of the involuntary bankruptcy petition, was being sanctioned, or that liability under 28 U.S.C. §1927 was a basis for imposing sanctions.

An analysis of the December 22, 1992 Bankruptcy Court Opinion reveals that sanctions were imposed, sua sponte, for a variety of papers filed, having nothing to do with the filing of the involuntary petition. Sanctions were imposed for the filing of a motion for the bankruptcy judge to recuse herself (Appendix, Page 23); there was no claim that this was an improper motion before the December 22, 1992 sanctions Order issued. Sanctions were imposed for the filing of a motion for contempt and sanctions against MR. LAMPL (Appendix, Page 23); there was no claim that this was an

improper motion before the December 22, 1992 sanctions Order issued. Sanctions were imposed for filing a motion to disallow the claims of certain taxing body creditors (Appendix, Pages 23, footnote 5); there was no claim that this was an improper motion before the December 22, 1992 sanctions Order issued, and, in fact, the sanctioned attorney's Client prevailed in getting a number of the claims disallowed.

Also, an inference can be drawn from the December 22, 1992 Bankruptcy Court Opinion that sanctions were also imposed for arguments.

There were arguments as to whether there were "assets" of the Debtor (Appendix, Pages 29a-31a), as distinguished from "property of the estate", which latter term is defined in

the Bankruptcy Code. It was argued that the term "assets", not defined by the Bankruptcy Code, has a common meaning associated with tangible value.

Additionally, it is inferred from the December 22, 1992 Bankruptcy Court Opinion that sanctions were imposed for arguments made on the issue of whether the Debtor was a guarantor of a mortgage note, because the bankruptcy schedules did not report a guaranty (Appendix, Pages 32a-34a). It is to be noted that it is the duty of a debtor, not creditors, to file schedules under 11 U.S.C. §521(1), which states:

> The debtor shall- (1) file... a schedule of assets and liabilities..."

Arguments are not governed by Bankruptcy Rule 9011 or 28 U.S.C. §1927. Making argument of legal theory, even if

done in the alternative, cannot and should not be a sanctionable event. The Bankruptcy Judge improperly sanctioned Your Petitioner for making argument.

There was never any notice that any of these matters were the subject of sanctionable conduct, or that sanctions were contemplated under 28 U.S.C. §1927.

WHEREFORE, it is requested that a Writ of Certiorari be granted.

Respectfully submitted,

JOHN M. SILVESTRI
223 Fourth Avenue, Room 700
Pittsburgh, PA 15222-1713
(412) 391-0958

Supreme Court, U.S.
FILED

No.

95-497 SEP 25 1995

OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1994

JOHN M. SILVESTRI,

Petitioner,

vs.

MARK J. CHRISTMAN
and JOAN P. FELDMAN,

Respondents.

Writ Of Certiorari
To The United States Court
Of Appeals For The Third Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

JOHN M. SILVESTRI, ESQ.
Petitioner
Pa. I.D. #21479
223 Fourth Avenue, Room 700
Pittsburgh, PA 15222-1713
(412) 391-0958

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 94-3416

JOHN M. SILVESTRI,
Appellant.

v.

JOSEPH BERNSTEIN,
Trustee

Appeal from the United States
District Court for the Western
District of Pennsylvania
(D.C. Civil Action No. 94-cv-00145)
(District Judge: Honorable Alan N.
Bloch)

Submitted Under Third Circuit
LAR 34.1(a)
Submitted on May 23, 1995

Before: GREENBERG, ROTH and ALDISERT,
Circuit Judges

JUDGMENT ORDER

After consideration of all contentions raised by appellant,

IT IS ADJUDGED AND ORDERED that the judgment of the District Court entered July 25, 1994, be and is hereby affirmed.

Costs to be taxed against appellant.

BY THE COURT,
/s/ Jane R. Roth
Circuit Judge

Attest:
/s/ P. Douglas Sisk
P. Douglas Sisk, Clerk
Dated: MAY 30 1995

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 94-3505

ELIAS J. HAKIM, JR.;
JOHN M. SILVESTRI,

v.

MARK J. CHRISTMAN; JOAN P. FELDMAN;
ROBERT O. LAMPL; MICHAEL R. KELLY;
JAMES A. ASHTON,

JOHN M. SILVESTRI,
Appellant.

On Appeal From the United States
District Court For the Western
District of Pennsylvania
(D.C. Civil Action No. 94-cv-00144)
(District Judge: Honorable Alan N.
Bloch)

Submitted Under Third Circuit
LAR 34.1(a)
May 23, 1995

Before: GREENBERG, ROTH and ALDISERT,
Circuit Judges

JUDGMENT ORDER

After consideration of the contentions raised by appellant, it is

ORDERED AND ADJUDGED that the judgment of the district court entered August 4, 1994, be and is hereby affirmed.

Costs taxed against appellant.

By The Court,
/s/ Jane R. Roth
Circuit Judge

ATTEST:
/s/ P. Douglas Sisk
P. Douglas Sisk, Clerk
Dated: MAY 30 1995

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 94-3416

JOHN M. SILVESTRI,
Appellant.

v.

JOSEPH BERNSTEIN,
Trustee

Before: SLOVITER, Chief Judge, BECKER, STAPLETON, MANSMANN, GREENBERG, HUTCHINSON, SCIRICA, COWEN, NYGAARD, ALITO, ROTH, LEWIS, MCKEE, SAROKIN, and ALDISERT, Circuit Judges

SUR PETITION FOR REHEARING IN BANC

The Petition for Rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked

for rehearing, and a majority of the circuit judges of the circuit in regular active service having not voted for rehearing by the court in banc, the petition for rehearing is denied.

By The Court,
/s/ Jane R. Roth
Circuit Judge

Dated: JUN 27 1995

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 94-3505

ELIAS J. HAKIM, JR.;
JOHN M. SILVESTRI,

v.

MARK J. CHRISTMAN; JOAN P. FELDMAN;
ROBERT O. LAMPL; MICHAEL R. KELLY;
JAMES A. ASHTON,

JOHN M. SILVESTRI,
Appellant.

Before: SLOVITER, Chief Judge, BECKER,
STAPLETON, MANSMANN, GREENBERG,
HUTCHINSON, SCIRICA, COWEN, NYGAARD,
ALITO, ROTH, LEWIS, MCKEE, SAROKIN,
and ALDISERT, Circuit Judges

SUR PETITION FOR REHEARING IN BANC

The Petition for Rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular

active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service having not voted for rehearing by the court in banc, the petition for rehearing is denied.

By The Court,
/s/ Jane R. Roth
Circuit Judge

Dated: JUN 27 1995

VERBATIM REPRODUCTION OF DOCKET ENTRY 62
IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
IN RE VIRGINIA MANSIONS APARTMENTS, INC.
BANKRUPTCY NO. 88-01186-JKF

Mar. 10 62. ORDER that 88-7720M is **DENIED**; Oral motion of R. Lampl to sub. himself as designated officer of the Debtor is **GRANTED**; oral motion of the Debtor through Atty. Lampl to convert to Ch. 7 is **GRANTED**; 89-90M & 88-5359M are **DISMISSED as Moot**; TRND is vacated per Atty Bernstein; POC bar date is vacated. Order signed 3/9/89 EOD 3/13/89 cc: All Parties lpl

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Re:		
VIRGINIA MANSIONS APARTMENTS, INC., Debtor	:	Bankruptcy No. 88-01186 JKF
VIRGINIA MANSIONS CONDOMINIUM ASSOCIATION, Movant	:	
vs.	:	Motion No.
ELIAS J. HAKIM, JR., JANET R. HAKIM, and JOHN M. SILVESTRI, Respondent	:	88-5359-M
ROBERT O. LAMPL, Movant	:	
vs.	:	Motion No.
ELIAS J. HAKIM, JR., JANET R. HAKIM, and JOHN M. SILVESTRI, Respondents	:	89-1373-M

APPEARANCES:

Michael R. Kelly, Esq., Counsel for Robert O. Lampl

John M. Silvestri, Esq., Counsel for Respondents

Joan P. Feldman, Esq., Counsel for Virginia Mansions Condominium Association, Inc.

Joseph J. Bernstein, Esq., Counsel for Trustee

Robert L. Federline, Esq., Counsel for Chartiers Valley School District and the Township of Scott

MEMORANDUM OPINION

The matters before the court are motions for sanctions filed on behalf of Virginia Mansions Condominium Association, Inc., (hereafter "Association") and Robert O. Lampl (hereafter "Lampl"). Lampl also has requested that this matter be referred to the Department of Justice for investigation pursuant to 18 U.S.C. §152.[1] The motions will be granted and sanctions will be imposed. Furthermore, the matter will be referred to the Disciplinary Board of the Supreme Court of Pennsylvania for such action as it deems appropriate regarding John Silvestri (hereafter "Silvestri") counsel

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[1]. 11 U.S.C. §152 provides criminal penalties for false statements or claims and other knowing and fraudulent acts in connection with a bankruptcy case.

for petitioning creditors Elias J. Hakim, Jr., and Janet R. Hakim, his wife (hereafter "Hakims"). We begin with a history of the events that led to the filing of the involuntary petition.

On September 1, 1979, the Hakims established the Sunland Properties Trust for the benefit of their children and named Lampl as its trustee.[2] On October 1, 1979, Lampl, as trustee for the Sunland Properties Trust, entered into a Stock Purchase Agreement with the Hakims to purchase all of the issued and outstanding stock of Debtor for 6.5 million dollars. See Lampl Exhibit 3. A note dated November 15, 1979, was executed by Lampl on behalf of the

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[2]. While this case was pending the Orphan's Court of Allegheny County named a successor trustee.

Sunland Properties Trust in favor of the Hakims. On the same date, Debtor, via its then president, Douglas Campbell, executed a mortgage in the Hakims' favor to secure the note. By deed dated December 1, 1979, Debtor conveyed the real estate to Lampl as trustee under the terms of the trust agreement. On May 4, 1987, the Hakims confessed judgment against Lampl as trustee on the note for $11,670,642.50. Of that amount 6.5 million dollars was principal and the balance included costs, interest, and attorney's fees. On or about April 18, 1988, Silvestri filed a complaint in confession of judgment on behalf of the Hakims against Debtor in the amount of $12,291,500 pursuant to a confession of judgment clause in the mortgage. This confession of judgment was filed after

the Association commenced an action against Debtor in the Court of Common Pleas of Allegheny County on December 14, 1987, alleging breach of warranty, negligence, fraud and deceit in connection with the construction of Debtor's apartments in the late 1960s.[3] Under the Stock Purchase Agreement, the Hakims indemnified the Sunland Properties Trust and Debtor against any loss, damage or claim deriving from liabilities, debts, obligations, et cetera, existing up to and including the closing date on the sale. Therefore, the Hakims ultimately would be responsible for any judgment the Association obtained against Debtor. On behalf of the Hakims, on April 29, 1988, Silvestri filed the

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[3]. The apartments were converted to condominiums in 1980.

involuntary petition which spawned the instant motions. At the time of the bankruptcy filing, Debtor no longer owned the real estate subject to the mortgage, having conveyed it to the Sunland Properties Trust on December 1, 1979.

We find that the involuntary bankruptcy petition was filed and the case prosecuted by Silvestri and Elias Hakim in bad faith.[4] That is, it was filed and prosecuted for no legitimate bankruptcy purpose in an attempt to delay the Association's state court action,

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4. Janet R. Hakim, although named in the caption of the involuntary petition as a petitioning creditor and in various other pleadings or documents in this case, had no involvement in the case. She did not sign the involuntary petition or any of the pleadings that form the basis for the motions at issue. She was not called as a witness and did not otherwise participate in the case. Therefore, sanctions will not be imposed against her.

avoid the Hakims' liability to the Sunland Properties Trust and to Debtor under the Stock Purchase Agreement, and harass the Association and Lampl. Furthermore, under §303 of the Bankruptcy Code, an involuntary petition can be filed only by claimholders whose claims, inter alia, are not "contingent as to liability or the subject of a bona fide dispute". 11 U.S.C. §303(b)(1). The schedules were filed by Gary Hakim, Debtor's designated officer and Elias Hakim's son, only after Lampl conceded to chapter 7 status on behalf of the estate. According to the schedules, the Hakims' claim is disputed and Debtor is a contingent creditor of the Hakims under the terms of the Stock Purchase Agreement which provides that the Hakims shall

> jointly and severally . . . indemnify and hold harmless [Debtor] and [Lampl as trustee of the Sunland Properties Trust] against any loss, cost, damage, or expense arising from nonpayment of any taxes . . . for periods prior to the closing date . . .

and

> indemnify and hold harmless [Lampl and the Sunland Properties Trust], its representatives, successors and assigns, and [Debtor] against any and all damages resulting from any breach of the warranties, representations and covenants set forth herein or any other provision of this Agreement, and against any and all demands, claims, actions or causes of action, assessments, losses and damages arising or resulting or deriving from or by reason of any claims, obligation, debts, demands or liabilities existing as against [Debtor] prior to and including the closing date of this transaction.

Stock Purchase Agreement, ¶¶7.17, 8, Lampl Exhibit 3.

Moreover, the Hakims' claim is founded entirely on the mortgage itself, not the note. Debtor was a signatory

only to the mortgage, not the note. The note was signed by Lampl as trustee of the Sunland Properties Trust. Silvestri argued that the mortgage is a debt instrument because it is incorporated by reference into the note, See, e.g. Housing Mortgage Corp. v. Allied Construction, Inc., 374 Pa. 312, 97 A.2d 802 (1953) (terms of an agreement may be contained in more than one document and the documents should be interpreted together, notwithstanding all parties did not execute all documents). Cf. Colbassani v. Society of Christopher Columbus, 159 Pa. Super. 414, 48 A.2d 106 (1946) (bondholders are bound by mortgage conditions inasmuch as mortgage is incorporated in bonds by reference). Notwithstanding incorporation by reference, it is well established in

Pennsylvania that it is the note, not the mortgage, that evidences the debt. The mortgage is not a debt instrument but a pledge of an interest in real estate as collateral to secure payment of the note. A note and mortgage represent separate obligations. See In re Estate of Evanovich, 487 Pa. 55, 408 A.2d 1092 (1979); Stricker v. McDonnell, 213 Pa. 108, 62 A. 520 (1905). See also Courtney v. Ryan Homes Inc., 345 Pa. Super. 109, 497 A.2d 938 (1985); Haggerty v. Fetner, 332 Pa. Super. 333, 342, 481 A.2d 641, 646 (1984). In Johnson v. Home State Bank, 111 S.Ct. 2150 (1991), the Supreme Court noted that although a debtor's personal liability is extinguished in bankruptcy, the mortgagee retains an in rem action on the mortgage. Johnson is distinguishable from this case, however,

because, here, Debtor never had a personal liability on a note but only granted a security interest against its real estate, giving rise only to an in rem liability. Moreover, the statute of frauds in Pennsylvania requires that interests in real estate must be in writing and signed by the party to be charged. 33 Pa. Stat. Ann. §1. In the case before us, however, Debtor was not a signatory to the note and never obligated itself on the note. Debtor merely pledged its real estate as security for the Sunland Properties Trust's obligation to satisfy the terms of the note. At the time of the filing of this bankruptcy petition, Debtor owned no real estate subject to an in rem claim by any creditor. Debtor transferred its real estate to the Sunland Properties Trust on

December 1, 1979, nearly ten years before the bankruptcy. The Hakims, as former sole stockholders of Debtor and settlors of the Sunland Properties Trust, initiated, knew about and benefitted from the conveyance.

Silvestri's and Hakim's argument that the mortgage constituted a debt instrument was not made in good faith in light of Pennsylvania law governing such instruments. In arguing that the incorporation by reference created Debtor's obligation on the note, Silvestri and Hakim cited no cases and the Housing Mortgage and Colbassani cases discussing incorporation by reference do not stand for the proposition that a nonsignatory to a document is liable under it. Furthermore, Silvestri and Hakim never argued for a modification or

reversal of existing law and nothing they placed before this court could fairly support such a contention . Bankruptcy Rule 9011 requires the imposition of sanctions against an attorney, the represented party, or both, with respect to signed pleadings which are not "warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law". Fed. R. Bankr. P. 9011, 11 U.S.C. Silvestri signed the involuntary petition and most if not all of the pleadings. Elias Hakim, Jr., is the signatory to the verification that accompanied the involuntary petition. The basis of the bankruptcy was the fallacious premise that a mortgage is a debt instrument. Furthermore, most of the other motions filed in this case were not well grounded

in fact.[5] For example, Silvestri, on behalf of Hakim, filed a motion to have this judge recuse herself as well as a motion seeking to have sanctions imposed against Lampl and to have him held in contempt of court, neither of which had any basis and, in fact, were grounded on distortions and misrepresentations of the facts. See In re Virginia Mansions Apartments, Inc., 1991 WL 105284 (Bankr. W.D. Pa.) (motion to recuse); In re Virginia Mansions Apartments, Inc., 1991 WL 105286 (Bankr. W.D. Pa.) (motion for

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[5]. The district found a statute of limitations issue raised in resolution of a claim of taxing bodies to be a question of first impression. However, there would have been no claim or issue in bankruptcy but for the bad faith filing of the involuntary petition. Thus, sanctions also will be imposed for the filing of that motion. See In re Virginia Mansions Apartments, Inc., 108 B.R. 557 (W.D. Pa. 1989).

contempt and sanctions against Lampl). Thus, Bankruptcy Rule 9011 sanctions will be imposed against Hakim and Silvestri, jointly and severally because both were aware at the facts yet chose to misrepresent them for purposes of filing and prosecuting the case and the various motions.

We note that neither Silvestri nor Hakim are strangers to the bankruptcy process. Our research has disclosed other bankruptcy cases in which Hakim is a named party in a proceeding within a bankruptcy case. See, e.g., In re Alchar Hardware Co., Inc., 764 F.2d 1530 (11th Cir. 1985); In re Lyman, 113 B.R. 729 (Bankr. M.D. Fla. 1990); In re Sorry Charlie's of Upper St. Clair, Inc., 100 B.R. 258 (Bankr. W.D. Pa. 1989). With respect to Silvestri, we note that he has

practiced bankruptcy law for years and is, or should be, aware of what constitutes the appropriate basis for an involuntary bankruptcy filing. We stress that even without experience in the field of bankruptcy law Silvestri would be expected to ascertain the propriety of the filing. However, the egregiousness of his misfeasance is compounded by virtue of his experience. Furthermore, before the involuntary was filed, Silvestri, Lampl and Hakim, among others, had a meeting at which time Hakim and Silvestri requested that Lampl file the bankruptcy on behalf of Debtor. Lampl refused, stating his opinion that there was no basis for a bankruptcy. When Silvestri was unsuccessful in inducing Lampl to initiate the filing, Silvestri undertook the task.

The standard for testing conduct under Bankruptcy Rule 9011 is an objective one. Eavenson, Auchmuty & Greenwald v. Holtzman, 775 F.2d 535 (3d Cir. 1985). The conduct must be evaluated by "inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted." Dura Systems, Inc. v. Rothbury Investments, Ltd., 886 F.2d 551, 556 (3d Cir. 1989), cert. denied 493 U.S. 1046 (1990). Based on what Hakim and Silvestri knew at the time of the filing of the involuntary petition and other motions,[6] Rule 9011 sanctions must be imposed.

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[6]. For example, they knew that the Hakims' claim was disputed and that Debtor had a contingent claim against the Hakims. With respect to the other motions referred to in text, see In re

(continued...)

Sanctions also will be imposed against Hakim and Sllvestri, jointly and severally, based on the court's inherent power to sanction litigants who appear before it. In testing conduct with respect to the court's inherent power to sanction, the standard is a subjective one. In re Stephen W. Grosse, P.C., 96 B.R. 29, 32 (E.D. Pa.), aff'd mem. sub nom. Dubin v. Jakobowski, 879 F.2d 856 (3d Cir.), cert. denied, 493 U.S. 976 (1989). A court has the "authority to take any action to make any determination necessary or appropriate to enforce or implement orders and rules or to prevent an abuse of process and to act sua sponte

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6. (...continued)
re Virginia Mansions Apartments, Inc., 1991 WL 105284 (Bankr. W.D. Pa.) and In re Virginia Mansions Apartments, Inc., 1991 WL 105286 (Bankr. W.D. Pa.)

when it is issuing orders or taking any action". In re Assaf, 119 B.R. 465, 467 (E.D. Pa. 1990) (emphasis added). See also In re Stephen W. Grosse, P.C., 84 B.R. 377 (Bankr. E.D. Pa. 1988), aff'd, 96 B.R. 29 (E.D. Pa.), aff'd mem. sub nom. Dubin v. Jakobowski, 879 F.2d 856 (3d Cir.), cert. denied, 493 U.S. 976 (1989).

The conduct in this case of both Hakim and Silvestri is such that under either standard sanctions are not only appropriate but, in the interests of justice and equity, required. With respect to the filing of the involuntary, Silvestri and Hakim knew, or should have known, that the Hakims were not creditors of Debtor or at the very least that their claim was subject to a bona fide dispute. They knew that the Hakims' in rem claim

against Debtor was extinguished in 1979 when Debtor conveyed its real estate to another entity formed by the Hakims for their children's benefit, to-wit, the Sunland Properties Trust. However, in order to delay the state court action, Hakim and Silvestri filed the involuntary. In addition, throughout the course of the case they obstructed its progress and harassed other parties at every turn through groundless allegations, untrue statements and unethical conduct. For example, the case was filed as a "no asset" case by Silvestri, as the signatory to the petition, and Hakim, as the signatory to the verification. During one of the many hearings in this case, Silvestri alleged that there were assets but that Lampl had concealed them. Silvestri vacillated

between allegations that assets did and did not exist depending on which statement would serve his and Hakim's purpose at the particular time. The United States Trustee designated Joseph Bernstein, Esquire, as the trustee in bankruptcy to investigate the nature and existence of assets, if any. When Bernstein filed a report indicating that he could find none, Silvestri requested in a letter to Bernstein that Silvestri's request was based on the allegation that Bernstein was biased in favor of Lampl, Lampl's ex-wife and his current wife, which allegations were not supported. Although the letter was not filed with the court, it precipitated a motion by the trustee to resolve the allegations. Silvestri finally stated the contradiction that there were no assets

but expressed an irrational theory upon which assets existed; that is, fictional choses in action in the form of contingent lawsuits which, if they were within any applicable statute of limitation, could be filed, litigated for years, and potentially result in a judgment in Debtor's favor which would enure to the Hakims' benefit by virtue of the confessed judgment. To the contrary, the only cause of action would belong to Debtor against the Hakims on the basis of the indemnity and warranty contained in the Stock Purchase Agreement.

On other points, Silvestri behaved in a similar manner. That is, he constantly avoided responding to questions from the court and opposing attorneys with tangential and/or irrelevant allegations and/or by changing

the subject. The transcripts are rife with examples of such incidents.

Another example of Hakim's and Silvestri's untoward conduct involves an alleged guaranty. At one point, Hakim and Silvestri expressed the theory that Hakim's status as a creditor of Debtor is based on a guaranty given by Debtor to the Hakims with respect to obligations of the Sunland Trust in exchange for Hakim's agreement to indemnify Debtor against certain liabilities. However, the schedules filed in this case make no mention of any guaranty, the existence of a guaranty was not proven at trial and no documentary evidence was proffered by Hakim or Silvestri to substantiate its existence. Hakim and Silvestri argue that the fact that the mortgage incorporates the promissory note also

thereby incorporates a promise to execute a guaranty. However, a promise to execute a guaranty does not create a guarantee. Furthermore, both statute and case law require that a guaranty be in writing. 33 Pa. Stat. Ann. §3; Bayard v. Pennsylvania Knitting Mills Corp., 290 Pa. 79, 137 A. 910 (1927) (where the purpose is to create guaranty for which a third party is to be primarily liable, the agreement must be in writing).

Hakim and Silvestri further argue that under certain circumstances an original oral promise for the promisor's benefit which incidentally contains a promise to pay another's debt will be enforced. Assuming without deciding that such may be the case under appropriate circumstances, no evidence was proffered to establish what those circumstances

might be; that, whatever appropriate factors might be, they would be met in this case; or that an exception to the clear wording of the statute exists herein. The only basis for the alleged guaranty is ¶2.3 of the Stock Purchase Agreement which provides:

> The balance of the purchase price in the amount of Six Million Four Hundred Fifty Thousand Dollars ($6,450,000) shall be evidenced by a purchase money mortgage note. Said note shall be executed by [Sunland Properties Trust] and guaranteed by [Debtor], and such guaranty shall be secured by a mortgage on [Debtor's] real property.

Lampl Exhibit 3. This paragraph indicates an intent to execute a guaranty in the future, but does not constitute an enforceable guaranty. 33 Pa. Cons. Stat. Ann. §3. A minimal investigation would have disclosed the requirement of a writing.

The issue of corporate status also became a weapon in the hands of Hakim and Silvestri. At the outset of the case, Silvestri asserted that Debtor had been dissolved. When questioned as to the propriety of a bankruptcy filing inasmuch as a dissolved corporation is a nonentity and, therefore, could not be a debtor, Silvestri stated that the corporate dissolution, begun in 1979, had never been completed. Investigation revealed that all steps necessary to effect the dissolution had been taken nearly ten years prepetition except that the final Articles of Dissolution had not been filed with the Pennsylvania Department of State. Upon learning of that fact, Lampl volunteered to conclude the dissolution. Thereafter, Silvestri filed a motion requesting that Lampl be held in contempt

of court and have sanctions imposed against him on the ground that, inter alia, he had not completed the dissolution as he had agreed to do. At the hearing on this motion, Lampl stated that he was unable to do so because he could not locate certain necessary documents. Silvestri revealed for the first time that the missing documents were in his and/or Hakim's possession. Thus, Silvestri, on behalf of Hakim, filed a contempt and sanctions motion against Lampl based on a situation created by them in concealing facts and withholding documents necessary to the resolution of the very issue that they raised. This occurred in the face of this court's order of March 9, 1989, directing Silvestri and the Hakims to furnish Lampl with copies of documents in

their custody, control or possession. Such blatant misuse of the court system and improper, harassing and abusive litigation tactics are rare.

At one point Silvestri committed the unconscionable act of filing what purported to be "evidence" of Lampl's debt situation. Not only was the "evidence" irrelevant, it was not authenticated and otherwise was inadmissible and immaterial to any issue before this court. Furthermore it was not offered in court during the many hearings in this case but was filed of record with the Clerk independently. We find the purpose of its filing to be solely to embarrass and harass Lampl.

The responsibility for the foregoing incidents are laid equally on Hakim's doorstep. He attended all the hearings,

he testified, he signed documents. He never interposed any objection to anything Silvestri did or said on his behalf. His conduct is no less sanctionable merely because he was silent. One cannot sit idly by and permit misrepresentations to be foisted upon the court or litigants nor can one permit an abuse to be perpetrated or perpetuated on one's behalf. Hakim is a sophisticated businessman and is familiar with the workings of the judicial system. Not only has he been involved in various bankruptcy cases, there are no fewer than six state court reported opinions in which he was a named party. Thus, Hakim and Silvestri are equally subject to sanctions.

We also impose sanctions against Silvestri alone under 28 U.S.C. §1927

which provides for the imposition on an attorney of the obligation to pay excess costs, expenses, and attorneys' fees reasonably incurred because of counsel's unreasonable and vexatious conduct which "multiplies the proceedings". All of the fees and costs incurred in this case were caused by Sllvestri's conduct on behalf of Hakim from the date of the filing of the involuntary petition to the present. But for this improper petition, all of them would have been wholly unnecessary.

We find that the bankruptcy was filed and prosecuted by Silvestri and Hakim in bad faith in order to hinder the Association in its state court action because a verdict in favor of the Association would have meant liability for the Hakims under the Stock Purchase Agreement. Hakim and Silvestri knew that

the Hakims had no claim cognizable under §303 but filed this petition despite their knowledge.[7] They made baseless and false allegations, including that which constituted the very basis for the bankruptcy filing, all in an attempt to

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[7]. In the months before the bankruptcy was filed Silvestri approached Lampl in his capacity both as stockholder of record in Debtor, in his capacity as trustee of the Sunland Properties Trust, and as an attorney experienced in the practice of bankruptcy, with a request that Lampl file a bankruptcy for Debtor. Lampl refused, stating his opinion that there was no basis. See Association Exhibit 7 at Docket Entry 95. The Association's motion for sanctions filed at the commencement of this case also requested sanctions under 11 U.S.C. §303(i). An order was entered denying sanctions under §303(i) based on the state of the record and evidence at that time and we shall not revisit the issue. But see Paradise Hotel Corp. v. Bank of Nova Scotia, 842 F.2d 47 (3d Cir. 1988) (debtor's failure to contest involuntary petition did not constitute waiver of right to request punitive damages or damages proximately caused by bad faith filing provided for by that section).

forestall the possibility of a verdict in favor of the Association in the state court action.[8]

Silvestri's and Hakim's conduct also caused the monopolization of many days of court time expended in hearings and in preparation therefor. Further, the court and staff spent many days reviewing transcripts, performing research and preparing orders and opinions in order to resolve the matters raised by Hakim and Sllvestri. To compensate the system for this misuse of its scarce resources and to deter such conduct in the future, a fine will be imposed. The other parties, including Lampl, Lampl's attorneys, and counsel for the Association also were

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[8]. While these sanction motions were pending, the parties settled the state court action but expressly excepted these motions.

required to spend much time responding to pleadings, preparing for and attending hearings, and defending against Silvestri's and Hakim's erratic, meritless accusations and representations. Hakim and Silvestri will be required to pay the reasonable fees of all these parties. The amount of the fees will be determined by the court on the basis of fee applications previously filed.[9] See Docket Entries 219 (Association Final Fee and Cost Application),[10] 102 (Michael R. Kelly,

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[9]. There has been no attorney appointed for or fee petition filed by an attorney for the trustee; therefore, although he was required to expend time and effort, no fees are awarded to him or on his behalf

[10]. The fee application filed at Docket Entry 219 encompasses the Association's fee applications filed at Docket Entries (continued...)

counsel for Robert O. Lampl, Fee Application), 103 (James A. Ashton, counsel for Robert O. Lampl, Fee Application), 104 (Robert O. Lampl Fee and Cost Application). Silvestri and Hakim filed an objection which, based on the records, the facts as found in this and prior decisions of this court in this case, we find to be without merit.

In order to determine the amount to be paid to the Clerk, Silvestri and Hakim shall be required to file affidavits attaching authentic copies of their tax returns for the years 1989, 1990, and 1991. They shall also be required to attach to the affidavits other proof of

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[10]. (...continued)
101 (Association Fee Application), 105 (Amended Association Fee Application), and 133 (Association First Supplement Fee Application).

income including, inter alia, income statements, balance sheets, and profit and loss statements for the same time period and for the first nine months of 1992. Thereafter, the court shall determine the amount to be paid to the Clerk.

An appropriate order will be entered.

/s/Judith K. Fitzgerald
Judith K. Fitzgerald
United States Bankruptcy Judge

Dated: December 22, 1992

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Re:		
VIRGINIA MANSIONS APARTMENTS, INC., Debtor	:	Bankruptcy No. 88-01186 JKF
VIRGINIA MANSIONS CONDOMINIUM ASSOCIATION, Movant	:	
vs.	:	Motion No. 88-5359-M
ELIAS J. HAKIM, JR., JANET R. HAKIM, and JOHN M. SILVESTRI, Respondent	:	
ROBERT O. LAMPL, Movant	:	
vs.	:	Motion No. 89-1373-M
ELIAS J. HAKIM, JR., JANET R. HAKIM, and JOHN M. SILVESTRI, Respondents	:	

ORDER

AND NOW, to-wit, this 22nd day of December, 1992, it is ORDERED that

1. the motions are granted;

2. the case will be referred to the United States Department of Justice for

investigation regarding the possibility of violations of 18 U.S.C. §152;

3. a copy of this opinion will be transmitted to the Disciplinary Board of the Supreme Court of Pennsylvania with respect to John M. Silvestri;

4. Judgments will be entered separately against Elias J. Hakim, Jr., and John M. Silvestri in favor of the attorneys for Robert O. Lampl and Virginia Mansions Condominium Association in the amounts listed in paragraphs 4a through d herein. On or before January 31, 1993, Elias J. Hakim, Jr., and John M. Silvestri shall pay:

a. the attorney fees of Michael R. Kelly, Esquire, on behalf of Robert O. Lampl, in the amount of $7,315.00;

b. the attorney fees of Robert O. Lampl, Esquire, on his own behalf, in the amount of $15,339.50 and costs in the amount of $2,845.90;

c. the attorney fees of Mark J. Christman and Joan P. Feldman, counsel for the Virginia Mansions Condominium Association, Inc., in the amount of $29,324.70 and costs in the amount of $1,914.75;

d. the attorney fees of James A. Ashton, Esquire, on behalf of Robert O. Lampl, in the amount of $6,940.00.

5. It is **FURTHER ORDERED** that John M. Silvestri's and Elias J. Hakim, Jr.'s, liability for the fees and costs detailed in ¶1 hereof is **JOINT AND SEVERAL** pursuant to Fed. R. Bankr. P. 9011, 11 U.S.C.

6. It is **FURTHER ORDERED** that John M. Silvestri's liability also is based on 28 U.S.C. §1927.

7. It is **FURTHER ORDERED** that John M. Silvestri and Elias J. Hakim, Jr., shall pay to the Clerk of the Bankruptcy Court a fine to be determined by the court pursuant to this court's inherent power to sanction the conduct of those appearing before it. To this end it is **ORDERED** that **on or before January 31, 1993**, John M. Silvestri and Elias J. Hakim, Jr., shall file with the Clerk of the Bankruptcy Court affidavits attaching

a. authentic copies of their tax returns for the period January 1, 1989, through December 31, 1991;

b. income statements, profit and loss statements and balance sheets

for the period January 1, 1989, through September 30, 1992;

c. K-1s, W-2s, 1099s and any other evidence of income for the period January 1, 1989, through September 30, 1992;

d. a current accounts receivable aging schedule, if applicable.

8. It is **FURTHER ORDERED** that if the documents referred to in ¶7a, b, c, and d are not **timely** filed, the court shall enter an order setting the amount of the fine to be paid to the Clerk of the Bankruptcy Court without further notice or opportunity to be heard.

/s/Judith K. Fitzgerald
Judith K. Fitzgerald
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE		
Virginia Mansions Apartments, Inc.,	:	Bankruptcy No. 88-1186
	:	
Robert O. Lampl, Movant	:	Motion No. 89-1373-M
vs.	:	
Elias J. Hakim, Jr., Janet R. Hakim, and John M. Silvestri, Respondents	:	Chapter 7

JUDGMENT

AND NOW, to-wit, this 22nd day of December, 1992, it is **ORDERED** that judgment is hereby entered in favor of Robert O. Lampl and against Elias J. Hakim, Jr., and John M. Silvestri, jointly and severally, in the amount of $18,185.40, plus interest.

/s/Judith K. Fitzgerald
Judith K. Fitzgerald
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE		
Virginia Mansions Apartments, Inc.,	:	Bankruptcy No. 88-1186
	:	
Robert O. Lampl, Movant	:	Motion No. 89-1373-M
vs.	:	
Elias J. Hakim, Jr., Janet R. Hakim, and John M. Silvestri, Respondents	:	Chapter 7

JUDGMENT

AND NOW, to-wit, this 22nd day of December, 1992, it is **ORDERED** that judgment is hereby entered in favor of Michael R. Kelly and against Elias J. Hakim, Jr., and John M. Silvestri, jointly and severally, in the amount of $7,315.00, plus interest.

/s/Judith K. Fitzgerald
Judith K. Fitzgerald
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE		
Virginia Mansions Apartments, Inc.,	:	Bankruptcy No. 88-1186
	:	
Robert O. Lampl, Movant	:	Motion No. 89-1373-M
vs.	:	
Elias J. Hakim, Jr., Janet R. Hakim, and John M. Silvestri, Respondents	:	Chapter 7

JUDGMENT

AND NOW, to-wit, this 22nd day of December, 1992, it is **ORDERED** that judgment is hereby entered in favor of James A. Ashton and against Elias J. Hakim, Jr., and John M. Silvestri, jointly and severally, in the amount of $6,940.00, plus interest.

/s/Judith K. Fitzgerald
Judith K. Fitzgerald
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE		
Virginia Mansions Apartments, Inc.,	:	Bankruptcy No. 88-1186
Virginia Mansions Condominium Association,	:)	
Movant	:	
vs.	:	Motion No.
Elias J. Hakim, Jr.,	:	89-5359-M
Janet R. Hakim, and	:	Chapter 7
John M. Silvestri,	:	
Respondents	:	

JUDGMENT

AND NOW, to-wit, this 22nd day of December, 1992, it is **ORDERED** that judgment is hereby entered in favor of Mark J. Christman and Joan P. Feldman and against Elias J. Hakim, Jr., and John M. Silvestri, jointly and severally, in the amount of $31,239.45, plus interest.

/s/Judith K. Fitzgerald
Judith K. Fitzgerald
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Re: VIRGINIA MANSIONS APARTMENTS, INC., Debtor	Bankruptcy No. 88-01186 JKF
Robert O. Lampl, Michael R. Kelly and James A. Ashton Movants vs. John Silvestri, Elias J. Hakim, Jr. and Janet R. Hakim Respondents	Motion No. MM-1 Local Rule 9013.4 ¶6(c) Related to Motion Nos. 89-1373, 88-5359

SUPPLEMENTAL JUDGMENT ORDER REGARDING ORDER AND JUDGMENT ORDERS OF DECEMBER 22, 1992

AND NOW, to-wit, this 28th **day of January, 1993**, upon consideration of the above-captioned Motion for Clarification and Correction of Order of Court Pursuant to Fed.R.C.P. 60(a) and Bankruptcy Rule 9024:

WHEREAS this court has received and reviewed "The Motion for Clarification

and Correction of Order of Court Pursuant to Fed. R.C.P. 60(a) and B.R. 9024";

WHEREAS, for the reasons expressed in the Memorandum Opinion of December 22, 1992, this court intended but by oversight failed to include in the opinion and order and judgment orders of December 22, 1992, the supplemental affidavits regarding fees of movants;

WHEREAS the court has reviewed the above-captioned motion and supplemental fee affidavits;

WHEREAS no responses to the supplemental fee affidavits were filed, after notice duly given;

WHEREAS the supplemental fees requested by James A. Ashton and Michael R. Kelly are reasonable for the services performed under the circumstances;

WHEREAS the supplemental fees requested for Leslie Lampl are lumped with those of Robert O. Lampl;

WHEREAS the supplemental fees of Robert O. Lampl are duplicative in some respects of those of his counsel;

WHEREAS portions of James A. Ashton's, Robert O. Lampl's, and Leslie Lampl's requests for supplemental fees include estimated time;

IT IS ORDERED that, for the reasons expressed in the Memorandum Opinion of December 22, 1992 and pursuant to Fed. R. Civ. P. 60(a) and Fed. R. Bankr. P. 9024,

1. all requested supplemental fees for estimated time are disallowed;

2. all requested supplemental fees for Leslie Lampl are disallowed;

3. supplemental fees are awarded to James Ashton in the amount of $8,817.50 ($450.00 for estimated time disallowed);

4. supplemental fees are awarded to Michael R. Kelly in the amount of $5,401.00 (total amount requested);

5. supplemental fees are awarded to Robert O. Lampl in the amount of $7,352.50 ($585.00 for estimated time disallowed for Robert O. and Leslie Lampl, $1,971.00 for fees of Leslie Lampl disallowed, and $3,000.00 disallowed for unreasonable duplication of services of counsel);

6. Supplemental costs are awarded to Robert O. Lampl in the amount of $676.25 ($3,109.25 for unofficial transcripts disallowed, accounting for correction of Movants' mathematical error).

IT IS FURTHER ORDERED that interest on all fee awards runs from the effective date of the judgment orders.

THEREFORE, IT IS ORDERED that judgment is entered in favor of Robert O. Lampl in the amount of $22,247.25 and against John M. Silvestri and Elias in Hakim, Jr., jointly and severally. No judgment is entered against Janet R. Hakim. This court considers that the appeals filed with respect to Motion Nos. 88-5359 and 89-1373 are deemed to include this order and judgment.

/s/Judith K. Fitzgerald
Judith K. Fitzgerald
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA

In Re:	)	
	)	
Virginia Mansions	)	
Apartments, Inc.,	)	Bankruptcy No.
Debtor(s)	)	88-01186 JKF

ORDER

And Now, to-wit, this **26th** day of **February, 1993, It Is Hereby Ordered** that in accord with his letter request dated **February 19, 1993**, John Silvestri shall file **under seal** a supplemental affidavit disclosing financial information with the Clerk of the Bankruptcy Court on or before **April 16, 1993**. **It Is Further Ordered** that on or before **April 16, 1993**, counsel for Mr. Silvestri shall file a praecipe for entry of appearance listing name, address, telephone number and State Bar identification number.

It Is Further Ordered that an **in camera** hearing concerning determination of fines pursuant to the Opinion and Order of **December 22, 1992**, and supplemental Judgment Order dated **January 28, 1993**, is scheduled for hearing on **May 21, 1993**, at **9:00 a.m.** in Room 1112 of the William S. Moorhead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222. Hearing is limited to **three** hours.

/s/Judith K. Fitzgerald
Judith K. Fitzgerald
Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Re:		
VIRGINIA MANSIONS	:	Bankruptcy No.
APARTMENTS, INC.,	:	88-01186 JKF
Debtor	:	
	:	Related to
	:	Motion No.
	:	89-1373-M
	:	Motion No.
	:	89-5359-M

**ORDER IMPOSING SANCTIONS[1]
AND AMENDING AND CLARIFYING
THE ORDER OF DECEMBER 22, 1992,
AGAINST ELIAS J. HAKIM**

And now, to-wit, this 9 day of **March, 1993**, the Court having provided the opportunity for hearing which was declined by Elias J. Hakim and, pursuant to the request of Elias J. Hakim, having reviewed in chambers the financial documents filed on behalf of Elias J. Hakim and placed under seal on

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[1]. The Order of December 22, 1992, referred to the sanctions as "a fine" whereas the correct description is "a monetary sanction."

January 29, 1993, and the Court finding that the documents under seal reveal that Elias J. Hakim has substantial assets and sizeable income and that the payment of the sanctions ordered herein is well within the ability of Elias J. Hakim to pay and will cause no undue hardship to Elias J. Hakim and/or his wife and dependents, and the Court having considered the effort of Elias J. Hakim to resolve a number of outstanding disputes between himself and other individuals involved in this bankruptcy and/or in other law suits, all as reflected in the record of various hearings which have taken place before this Court, and the Court having considered the amount of attorneys' fees awarded against Elias J. Hakim in this case, and the Court finding that a

further monetary sanction is warranted based upon the conduct and authority articulated in the Opinion and Order of December 22, 1992, the prior opinions referenced therein and the Supplemental Orders issued thereafter;

Now, Therefore, it is **ORDERED** that Elias J. Hakim shall pay sanctions to the United States in the amount of $15,000.00, in the form of certified check, cashier's check or money order made payable to the Clerk, United States Bankruptcy Court for the Western District of Pennsylvania, and delivered to 1602 William S. Moorhead Federal Building, 1000 Liberty Avenue, Pittsburgh PA 15222, within thirty (30) days from the date of this Order.

It is **FURTHER ORDERED** that the payment required by this Order shall not

be stayed pending appeal, if an appeal is filed, **unless** Elias J. Hakim posts a bond in the amount of $15,000.00 with the Clerk of the United States Bankruptcy Court for the Western District of Pennsylvania along with the Notice of Appeal. If an appeal is filed accompanied by the bond, the payment of the sanction shall be stayed automatically and without further order pending the conclusion of the appeal.

It is **FURTHER ORDERED** that ¶¶ 7 and 8 of the Order of December 22, 1992, and page 15 of the Memorandum Opinion of that date which referred to "a fine" are amended to delete the reference to "a fine" and to insert in lieu thereof "a monetary sanction."

/s/Judith K. Fitzgerald
Judith K. Fitzgerald
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Re:		
VIRGINIA MANSIONS	:	Bankruptcy No.
APARTMENTS, INC.,	:	88-01186 JKF
Debtor	:	

ORDER GRANTING REQUEST FOR EXTENSION OF TIME TO SECURE COUNSEL AND RESCHEDULING HEARING

And now, to-wit, this 29th day of **April, 1993**, the court having read the letter request dated April 16, 1993, under seal of Attorney John Silvestri requesting an additional extension of time to obtain counsel, it is

ORDERED that the request is **GRANTED**. Movant shall file a written notification with the Court not later than **July 30, 1993**, identifying who counsel will be by name, address and telephone number. In addition, counsel shall file a praecipe for entry of appearance with the Clerk of the Bankruptcy Court not later than

July 30, 1993. The in camera hearing previously set on **May 21, 1993**, at 9:00 a.m. in **CANCELED** and is rescheduled on **August 6, 1993**, at **9:00 a.m.** in Courtroom 1112 of the William S. Moorhead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222. The hearing in limited to three hours.

/s/Judith K. Fitzgerald
Judith K. Fitzgerald
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA

In Re:	)	
	)	Bankruptcy No.
VIRGINIA MANSIONS	)	88-01186 JKF
APARTMENTS, INC.,	)	
Debtor	)	Chapter 7

ORDER SEALING DOCUMENTS

And Now, to-wit, this **6th** day of **August, 1993, It Is Hereby Ordered** that Sanctions Hearing Exhibit 1, Exhibit 2, the four pages of the proceeding memo, two tapes and log sheets of the hearing held August 6, 1993 are to be **sealed** until further Order of Court.

It is **Further Ordered** that the items under seal shall be utilized exclusively by the Court or any appellate court for the purposes detailed in the Opinion and Order of December 22, 1992.

/s/Judith K. Fitzgerald
Judith K. Fitzgerald
Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Re:		
VIRGINIA MANSIONS	:	Bankruptcy No.
APARTMENTS, INC.,	:	88-01186 JKF
Debtor	:	
	:	Motion Nos.
	:	88-5359-M &
	:	89-1373-M

SUPPLEMENTAL ORDER IMPOSING SANCTIONS AGAINST JOHN M. SILVESTRI

And now, to-wit, this **12th** day of **November, 1993**, the Court having heard the argument of counsel for Mr. Silvestri and the testimony of Mr. Silvestri and having reviewed the submissions filed under seal and the cases referred to by counsel for Mr. Silvestri as well as having conducted independent research;

IT IS ORDERED as follows:

(1) Within the next twelve (12) months, John M. Silvestri shall attend, at his own expense, a minimum of twelve (12) hours of continuing legal education

specializing in the area of bankruptcy, at least three (3) hours of which must involve involuntary bankruptcies.

(2) Within the next twelve (12) months, John M. Silvestri shall attend, at his own expense, a minimum of four (4) hours of continuing legal education programs focusing in the area of ethics in bankruptcy and four (4) hours focusing in ethics in litigation. This eight (8) hour requirement is in addition to any requirement of the Pennsylvania Supreme Court for continuing legal education in the area of ethics.

(3) Within three (3) days of having attended programs in compliance with this Order, John M. Silvestri shall file with the Court a certificate under penalty of perjury that he has in fact attended the programs, along with a brochure or

advertisement explaining the contents of the programs and a receipt issued by the program provider.

(4) Within thirty (30) days of the date of this Order, John M. Silvestri shall pay to the Clerk of the Bankruptcy Court the sum of $1,000.00. The Court has reviewed the evidence of income and expenses submitted by John M. Silvestri filed under seal and finds that John M. Silvestri has the ability to pay $1,000.00 to the Clerk of the Bankruptcy Court within this time period without suffering undue prejudice or harm. John M. Silvestri's financial resources are adequate to afford the $1,000.00 payment and, were it found to be required by this Court, a sum significantly in excess thereof. The Court has not included specific findings of fact

concerning John M. Silvestri's ability to pay for the reason that the information upon which our conclusion is based was filed under seal and would be available to any appellate court. In imposing the monetary sanction the Court has reviewed that information and considered the testimony and other evidence and finds, inter alia: that John M. Silvestri has a successful legal practice; is married; has a wife who is employed although the extent of her income is not known to the Court; and supports two minor children. The income and expenses detailed in the submissions to this Court indicate that John M. Silvestri and his family enjoy a lifestyle commensurate with a substantial income, which lifestyle will not be adversely affected by the $1,000.00 sanction issued herein.

(5) Until John M. Silvestri has taken the three (3) hours of continuing legal education focusing in the area of involuntary bankruptcies, he shall not represent any involuntary petitioning creditors or any involuntary debtors in the Western District of Pennsylvania.

This Order supplements and does not replace the Orders which required John M. Silvestri to pay various counsel fees. This Court finds that the sanctions imposed herein are the minimum necessary based upon the conduct described at length in the Memorandum Opinion dated December 22, 1992, as amended on January 28, 1993, and the various orders issued pursuant thereto; in view of the nature of the violation of Bankruptcy Rule 9011 described in the December 22, 1992, opinion; and in light of the

standards articulated by the United States Court of Appeals for the Third Circuit in Doering v. Union County Board of Chosen Freeholders, 857 F.2d 191 (3d Cir. 1988). The Court has considered John M. Silvestri's ability to pay, equitable considerations articulated to this Court during the hearing on this matter as well as in the submissions of Mr. Silvestri and his counsel, and the need to deter such conduct in the future.

This Order is a Final Order subject to appeal.

/s/Judith K. Fitzgerald
Judith K. Fitzgerald
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Re:		
VIRGINIA MANSIONS APARTMENTS, INC.,	:	Bankruptcy No. 88-01186 JKF
	:	Motion No. JAJ-1
Debtor	:	
	:	RELATED TO Motion Nos. 88-5359-M & 89-1373-M

ORDER REGARDING MOTION TO ALTER OR AMEND THE JUDGMENT

And now, to-wit, this 13th day of December, **1993**, the Court having considered the request in the above captioned motion, it is **ORDERED** that the **motion is granted in part and denied in part as follows:**

a. That part of the motion which requests that John M. Silvestri be excused from Paragraph (5) of this Court's Supplemental Order of November 12, 1993, which imposed sanctions against John M. Silvestri

requiring him to engage in three (3) hours of continuing legal education focusing in the area of involuntary bankruptcy law within one year of November 12, 1993, is **DENIED as premature** and the requirement remains fixed. **However**, if at the end of the one year period, John M. Silvestri has been unable to find a program or programs of at least three (3) hours in that area of law, and certifies to the Court what, if any, efforts he made to comply and what, if any, courses he has taken concerning involuntary bankruptcy within the year, then the Court will consider a motion to alter or amend this requirement.

b. The portion of the motion requesting modification of that part of Paragraph (5) of the November 12, 1993, Order which suspended John Silvestri from

representing any involuntary petitioning creditors or any involuntary debtors in the Bankruptcy Court for the Western District of Pennsylvania (hereafter "this Court") until the continuing legal education requirement is satisfied is **GRANTED** and that portion of Paragraph (5) is **AMENDED and RESTATED** as follows:

i. It is **ORDERED** that, until John M. Silvestri has satisfied the three (3) hours of continuing legal education requirement regarding involuntary bankruptcy and prior to agreeing to represent any involuntary petitioning creditor(s) or involuntary debtor(s) who seek his representation in this Court, John M. Silvestri shall disclose to the potential client(s) the requirement that he engage in continuing legal education focusing on involuntary bankruptcy law.

ii. It is **FURTHER ORDERED** that, prior to agreeing to represent or to accept fees from or on behalf of any involuntary debtor(s) or petitioning creditor(s) in this Court until the continuing legal education requirement is fulfilled or abrogated by a future order, John M. Silvestri shall seek authority from the appropriate judge of this Court to represent the debtor(s) or petitioning creditor(s) if fees or expenses will be sought from the estate. See 11 U.S.C. §§ 329, 330; Fed. R. Bankr. P. 2014, 9011; applicable local rules of court; and case law in the Third Circuit, e.g., F/S Airlease II, Inc., 844 F.2d 99 (3d Cir. 1988); In re Arkansas Co., Inc., 798 F.2d 645 (3d cir. 1986). Further, in his employment application and in any fee application filed by him in an

involuntary case in the Western District of Pennsylvania until the continuing legal education requirement is fulfilled or abrogated by a future order, John M. Silvestri shall disclose that the continuing legal education requirement has been imposed upon him as a sanction for his conduct in In re Virginia Mansions Apartments, Inc., Bankruptcy No. 88-01186.

/s/Judith K. Fitzgerald
Judith K. Fitzgerald
United States Bankruptcy Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:	)	
	)	
VIRGINIA MANSION APARTMENTS, INC.,	)	
Debtor,	)	
	)	
JOHN M. SILVESTRI,	)	
Appellant,	)	
vs.	)	Civil Action
JOSEPH BERNSTEIN, Trustee,	)	No. 94-145
	)	
Appellee.	)	

O R D E R

AND NOW, this 15th day of March, 1994, the transcript of proceedings held before the Bankruptcy Court having been filed of record with the district court on March 14, 1994,

IT IS HEREBY ORDERED that appellant shall file a brief in support of the appeal by no later than March 29, 1994;

and appellee shall file a brief in opposition by no later than April 13, 1994.***

/s/ Alan N. Bloch
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:	)	
	)	
VIRGINIA MANSION APT., INC.,	)	
Debtor,	)	
	)	
JOHN M. SILVESTRI,	)	
Appellant,	)	
vs.	)	Civil Action
JOSEPH BERNSTEIN, Trustee,	)	No. 94-145
	)	
Appellee.	)	

O R D E R

AND NOW, this 25th day of July, 1994, upon consideration of the Appellant's Appeal from the Bankruptcy Court's Order entered December 13, 1993,

IT IS HEREBY ORDERED that the Appeal is DENIED and the Order entered by Bankruptcy Judge Judith K. Fitzgerald are hereby AFFIRMED.

/s/Alan N. Bloch
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:	)	
	)	
VIRGINIA MANSION APT., INC.,	)	
Debtor,	)	
	)	
JOHN M. SILVESTRI,	)	
Appellant,	)	
vs.	)	Civil Action
MARK J. CHRISTMAN, et al.,	)	No. 93-144
Appellees.	)	

O R D E R

AND NOW, this 25th day of July, 1994, upon consideration of the Appellant's Appeal from the Bankruptcy Court's Order entered December 22, 1992, and the Supplemental Judgment Order Regarding Order and Judgment Orders of December 22, 1992, entered January 28, 1993, and upon further consideration of Appellees' Response thereto, and for the reasons set forth in Bankruptcy Judge

Fitzgerald's Opinion dated December 22, 1992,

IT IS HEREBY ORDERED that the Appeal is DENIED and the Orders entered by Bankruptcy Judge Judith K. Fitzgerald are hereby AFFIRMED.

/s/Alan N. Bloch
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:	)	
	)	
VIRGINIA MANSIONS APARTMENTS, INC.,	)	
Debtor.	)	
	)	Civil Action
JOHN M. SILVESTRI,	)	No. 94-145
Appellant,	)	
vs.	)	Bankruptcy
JOSEPH BERNSTEIN, Trustee,	)	No. 88-1186 JKF
Appellee.	)	

O R D E R

In consideration of the Motion for Stay Pending Appeal, it is Ordered that paragraph "b. i." of the December 13, 1993 Bankruptcy Court Order and paragraph "5" of the November 12, 1993 Bankruptcy Court Order be stayed pending the appeal which has been filed to the Third Circuit.

/s/Alan N. Bloch
United States District Judge

Date: 8/1/94

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:	)	
	)	
VIRGINIA MANSION APT., INC.,	)	
Debtor,	)	
	)	
JOHN M. SILVESTRI,	)	
Appellant,	)	
vs.	)	Civil Action
MARK J. CHRISTMAN, et al.,	)	No. 93-144
Appellees.	)	

O R D E R

AND NOW, this 4th day of August, 1994, upon consideration of Appellant's Motion for Rehearing (document No. 27) filed in the above captioned matter on August 3, 1994,

IT IS HEREBY ORDERED that said Motion is DENIED.

/s/ Alan N. Bloch
United States District Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:	)	
	)	Bankruptcy No.
VIRGINIA MANSIONS	)	88-1186
APARTMENTS, INC.,	)	
Debtor.	)	Chapter 7

INVOLUNTARY CASE: CREDITOR'S PETITION

1. Petitioner is ELIAS J. HAKIM, JR., 18304 Gulf Boulevard, Reddington Shores, Florida, holding claims against the Debtor, not contingent as to liability and not subject to bona fide dispute, amounting in the aggregate, in excess of the value of any lien held by him on the Debtor's property securing such claims, to at least $5,000.

The nature and amount of Petitioner's claim is as follows:

Nature of Claim	Amount of Undisputed Claim
Default on Mortgage Note in the principal amount of $6,500,000	$12,291,500

2. The Debtor's registered place of business and principal assets have been within this District for one hundred eighty (180) days preceding the filing of this Petition. The registered address of the Debtor is 408-9 Carlton House, 550 Grant Street, Pittsburgh, Allegheny County, Pennsylvania 15219.

3. The Debtor, VIRGINIA MANSIONS APARTMENTS, INC., is a corporation, a person against whom an Order for relief may be entered under Title 11, United States Code, and a principal managing officer of the Debtor is believed to be GARY HAKIM, Vice President, P.O. Box 14882, Pittsburgh, Pennsylvania 15228.

4. The Debtor has not paid its debt which is not subject to bona fide dispute and payment is overdue.

WHEREFORE, Petitioner prays that an Order of relief be entered against VIRGINIA MANSIONS APARTMENTS, INC. under Chapter 7 of Title 11, United States Code.

Respectfully submitted,

/s/ John M. Silvestri
JOHN M. SILVESTRI, ESQ.
Attorney for Petitioner
828 Frick Building
Pittsburgh, PA 15219-6002
(412) 391-0958

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA

In re:	)	Case No.
	)	88-1186 INV.
VIRGINIA MANSIONS	)	
APARTMENTS, INC.,	)	Motion No.
Debtor.	)	88-5359-M

MOTION TO DISMISS CHAPTER 7 PETITION

The Virginia Mansions Condominium Association ("ASSOCIATION"), hereby moves this Court, pursuant to 11 U.S.C. Sections 303 and 707, to dismiss this involuntary Chapter 7 petition filed herein on April 29, 1988, against Virginia Mansions Apartments, Inc. ("VMA") and in support thereof respectfully represents:

1. The ASSOCIATION is an non-profit corporation made up of the condominium unit owners in Virginia Mansions Condominium (the "CONDOMINIUM"), located

at 2120-2160 Greentree Road, Pittsburgh, Allegheny County, Pennsylvania 15220.

2. The ASSOCIATION is a creditor of VMA which commenced an action in the Court of Common Pleas of Allegheny County at No. GD 87-21412 for breach of warranty, negligence and fraud and deceit in the 1968 and 1969 construction of apartments, later converted to the CONDOMINIUM.

3. The subject CONDOMINIUM was constructed as an apartment complex between May of 1968 and December of 1969 and converted into a CONDOMINIUM through a Declaration filed February 6, 1980. VMA was the owner at the time of construction.

4. On or about September 1, 1979, Elias J. Hakim, Jr. and Janet R. Hakim (the "HAKIMS") established a trust know

as the Sunland Properties Trust (hereinafter "TRUST") recorded December 28, 1979, in the Recorder's Office of Allegheny County in Deed Book Volume 6207, page 59 and filed of record in the Orphan's Court Division in the Court of Common Pleas of Allegheny.

5. The trustee for the TRUST from the date of creation of the TRUST on September 1, 1979, to present is Robert O. Lampl (hereinafter "TRUSTEE").

6. On or about October 1, 1979, TRUSTEE entered into a Stock Purchase Agreement with the HAKIMS to purchase all of the issued and outstanding stock of VMA for the sum of Six Million Five Hundred Thousand ($6,500,000.00) Dollars. A copy of the Stock Purchase Agreement is attached hereto, made part hereof and incorporated herein as Exhibit "A".

7. By deed dated December 1, 1979 and recorded in Allegheny County in Deed Book Volume 6207, Page 263, VMA conveyed the CONDOMINIUM property to TRUSTEE under the TRUST Agreement. Thereafter, TRUSTEE converted the ten story brick and steel apartment building to a residential condominium and sold condominium units to members of Movant ASSOCIATION.

8. The transaction conveying the CONDOMINIUM property from VMA to TRUSTEE was evidenced by a mortgage note executed by TRUSTEE in favor of the HAKIMS dated December 15, 1979. A mortgage was given to secure the payments also dated December 15, 1979, executed by VMA in favor of the HAKIMS. The mortgage is invalid because it does not secure any monetary obligation of VMA to the HAKIMS

and there is no debt instrument obligating VMA to the HAKIMS.

9. A judgment was entered on the underlying "mortgage note" given by TRUSTEE in the Court of Common Pleas of Allegheny County, Pennsylvania by a Complaint in Confession of Judgment, wherein the HAKIMS are the Plaintiffs and TRUSTEE is the Defendant, at No. GD 87-7452, which confession of judgment was for the principal sum of $6,600,000.00, together with costs and interest and attorney's fees for a total judgment amount of $11,670,642.50. Said confession of judgment was entered on May 4, 1987. A copy of the Complaint in Confession of Judgment is attached hereto, made part hereof and incorporated herein as Exhibit "B".

10. On April 18, 1988, the HAKIMS confessed judgment against VMA in the Court of Common Pleas of Allegheny County, Pennsylvania at No. GD 88-6561 in the amount of $12,291,500.00. A copy of the Complaint in Confession of Judgment is attached hereto, made part hereof and incorporated herein as Exhibit "C". The Confession was purportedly take pursuant to a confession of judgment clause in the Mortgage between VMA and the HAKIMS.

11. The confession against VMA was improper in that VMA was not a party to the Mortgage Note or to a debt instrument. A mortgage is not a debt instrument. Moreover, the mortgage does not authorize confession of judgment for money, but only for possession. Therefore, the HAKIMS have no claim against VMA and are not creditors of VMA,

and are not eligible to file an involuntary petition.

12. Although VMA purported to attempt a still incomplete dissolution of VMA and notwithstanding purported conveyances by it of record to TRUSTEE, VMA, the HAKIMS and TRUSTEE are, in fact and in law, alter egos of each other.

13. On December 14, 1987, the Movant ASSOCIATION commenced an action against VMA, the HAKIMS, TRUSTEE and other parties in the Court of Common Pleas of Allegheny County at No. GD 87-21412 for breach of warranty, negligence and fraud and deceit in the 1968 and 1969 construction of the apartments, later converted to a condominium.

14. Paragraph 8.0 of the Stock Purchase Agreement which is attached hereto as Exhibit "A" provides that the

HAKIMS will indemnify and hold harmless the TRUST against any and all demands, claims, actions or causes of action, assessments, losses and damages ensuing or resulting or deriving from or by reason of any claims, obligations, debts, demands or liabilities existing against VMA prior to and including the closing date. Therefore, the HAKIMS would be responsible for any judgment the ASSOCIATION obtained against VMA in the ASSOCIATION action at No. GD 87-21412.

15. The ASSOCIATION'S action at No. GD 87-21412 asserts that VMA, the HAKIMS and the TRUST are alter egos of each other.

16. The Involuntary Petition under Chapter 7 of the Bankruptcy Code was filed in this Court solely in order to protect the HAKIMS from liability in the

ASSOCIATION'S action at No. GD 87-21412 and to delay that action. The Involuntary Petition is a sham in that HAKIMS have no claim against VMA.

17. Although VMA if liable, would have been in default since 1980 under the Mortgage, no action was taken against VMA until after the ASSOCIATION filed its action on December 14, 1987. The Involuntary Petition was filed only after the Court of Common Pleas of Allegheny County, Wettick, J. issued an order permitting special service of the ASSOCIATION'S Complaint upon VMA.

18. The ASSOCIATION believes and therefore avers that the HAKIMS have no claim against VMA.

19. The Involuntary Bankruptcy Petition filed by Elias J. Hakim, Jr. and Janet R. Hakim should be dismissed in

that the bases for HAKIMS alleged standing as Creditors, the Confession of Judgment filed by the HAKIMS against VMA, was done in collusion with VMA and was legally improper.

20. The Involuntary Petition is insufficient on its face because it is not brought by three or more entities holding claims as required by Section 303(b) of the Bankruptcy Code.

21. The Petition in insufficient on its face because VMA, is an asset of the TRUST, and a trust is ineligible as a debtor under Chapter 7.

22. The Petition was filed in bad faith.

23. The Petition fails to indicate the number of creditors of VMA in an attempt to circumvent Bankruptcy Code Section 303(b).

24. The Involuntary Petition was the result of collusion between the HAKIMS and VMA.

25. VMA has not assets.

26. VMA has not been conducting business since approximately 1979.

WHEREFORE, Movant prays for dismissal of this case and for such other relief as may be lawful and proper.

ROBERT N. HACKETT & ASSOCIATES

By: /s/ Mark J. Christman
Mark J. Christman
Attorney for the Virginia Mansions Condominium Association

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

- - -

BANKRUPTCY COURT PROCEEDINGS

- - -

IN RE:	Virginia Mansions Apartments
CASE NO.	88-01186
MOTION NO.	88-7720M 89-0090M 88-5359M

- - -

BEFORE:	HONORABLE JUDITH K. FITZGERALD
HEARING DATE:	March 2, 1989
HEARING LOCATION:	Courtroom No. 15 7th Floor U.S. Courthouse & Post Office Pittsburgh, PA 15219
HEARING REPORTER:	Ruth Wendy Callahan Professional Court Reporter

---

Wawrzyniak Reporting Service
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APPEARANCES:

On Behalf of Virginia Mansions Condominium Associates:

MARK CHRISTMAN, Esq. and
JOAN FELDMAN, Esq.
1105 Boyce Road
Pittsburgh, PA 15241

On Behalf of Chartiers Valley School District and Township of Scott:

ROBERT L. FEDERLINE, Esq.
820 Frick Building
Pittsburgh, PA 15219

On Behalf of Robert O. Lampl, Esq., individual and as Trustee of Sunland Properties Trust:

MICHAEL R. KELLY, Esq.
8th Floor - Renshaw Building
217 Ninth Street & Liberty Ave.
Pittsburgh, PA 15222

On Behalf of the Trustee, Chapter 7:

JOSEPH J. BERNSTEIN, Esq.
1033 Penn Avenue
Pittsburgh, PA 15222

On Behalf of Elias J. & Janet R. Hakim:

JOHN M. SILVESTRI, Esq.
828 Frick Building
Pittsburgh, PA 15219

- - -

- - -

I N D E X

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EXHIBITS	ADMITTED
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[Page 3]

THE COURT: This is the matter of Virginia Mansions Apartments at Bankruptcy No. 88-01186. There are three matters pending before the court this afternoon.

The first is a motion to vacate an earlier order that I had set at Motion No. 88-7720. Then there are two motions to dismiss. One which was filed by the petitioning creditors at Motion No. 89-0090, and the other which was filed by the Virginia Mansions Condominium Association at Motion No. 88-5359.

I intend to proceed in the following order. I am going to hear the argument on motion to vacate the order first. I am going to hear argument on the Hakims' motion to dismiss second, and then we will do the evidentiary hearing that was

scheduled initially for this afternoon on the condominium association's motion to dismiss.

Would counsel enter appearances, please.

MR. CHRISTMAN: Mark Christman, Virginia Mansions Condominium Association.

MS. FELDMAN: Joan Feldman, also for the Virginia Mansions Condominium Association.

MR. FEDERLINE: Robert Federline, for the Chartiers Valley School District and the Township of Scott. [Page 4]

MR. KELLY: Michael R. Kelly, representing Robert O. Lampl, trustee of Sunland Properties Trust.

MR. BERNSTEIN: Joseph Bernstein, Chapter 7 trustee.

MR. SILVESTRI: John Silvestri, representing the Hakims.

THE COURT: Is anyone present on behalf of the debtor?

(No response)

THE COURT: There is another preliminary matter which is going to have to be addressed at some point in time too, and that is whether or not the officer designated by the petitioning creditors is in fact an appropriate of officer.

Having reviewed the documents in the file I am becoming convinced that it is not an appropriate officer and in fact, the appropriate officer may have to be Mr. Lampl as trustee of Sunland Trust, because it does not appear that there will be any other officers available. However, I am going to hear argument on

that matter at some point before the day is over.

All right. The first motion I have is Mr. Lampl's motion to vacate an order which I entered [Page 5] with the consent of all parties present concerning the winding up of this debtor's affairs by the filing of a Certificate of Dissolution with the Pennsylvania Department of State.

Mr. Lampl or Mr. Kelly, whoever is going to argue this motion.

MR. KELLY: Your Honor, as you have indicated, there was an order directing Mr. Lampl to complete the dissolution process for this corporation. After originally agreeing that we would move to complete that dissolution process, we began to investigate what was apparently

necessary in order to complete this process.

It was our feeling, Your Honor, that we had to make certain representations to the Pennsylvania Department of State which we felt we were incapable of making upon further investigation.

THE COURT: What is the nature of those representations, Mr. Kelly?

MR. KELLY: Your Honor, it is our belief there had to be representations made about the financial condition of the corporation. In other words debts that may be owed to various parties including taxing bodies, and we are without or were without the necessary records to enable us to determine what debts [Page 6] were owed by this corporation, if any. What was owed to any of the taxing bodies that

may be involved. What was owed to any other creditors of the corporation.

THE COURT: Are you required to disclose a list of all debts that are unpaid or only the taxing debts?

MR. KELLY: Your Honor, the taxing debts we believe we were incapable of doing that because when this thing was originally begun back in 1979 -- I believe it was the original dissolution that Mr. Levine of Mr. Lampl's office was handling -- the final statement that was due to the corporation was supposed to come through the then accountant for the corporation as well as the personal accountant for the Hakims, and this was given to him. It was our understanding that it had been done.

We obviously became aware that it was not done when all of these things

came up. Helen Lampl had written -- Helen Pascardi had written a letter, and I think that has already been shown to the court as an exhibit in a prior hearing. There was a letter written to the Department of State indicating what had been done. It was clear there was additional documentation needed.

THE COURT: Well, that's --

[Page 7]

MR. KELLY: We do not have any of those records.

THE COURT: What is the documentation which is needed that hasn't been filed, Mr. Kelly? Specifically, not generally. Specifically what is required that hasn't been provided to the Corporation Bureau at this time?

MR. KELLY: Your Honor, the final -- I forget the title of the document.

Well, the final tax returns are what is due. But there is a form that is due to them.

THE COURT: The Certificate of Dissolution form. It requires that the corporation make certain representations to the Bureau of State regarding what? That's what I am asking.

MR. KELLY: Regarding payment of corporate tax obligations to the State of Pennsylvania.

THE COURT: All right. Only state taxes, not local taxes, not real estate taxes, not federal taxes?

MR. KELLY: Not federal taxes, state taxes.

THE COURT: What type of state taxes, corporate taxes?

MR. KELLY; Yes, Your Honor, and [Page 8] unemployment compensation taxes, to make sure those were all paid.

THE COURT: Unemployment compensation, state and corporate. What else?

MR. KELLY: I think the withholding taxes for the state.

THE COURT: Did this corporation ever have employees?

MR. KELLY: Yes, it did.

THE COURT: I believe it was represented to me at the very first hearing in this matter that the final federal tax return was in fact filed in 1979.

MR. KELLY: That's correct.

THE COURT: Why can't you make a representation to the state that it had no employees since that time and to the

fact that unemployment compensation state withholding taxes and state corporate taxes have all been paid because the debtor hasn't operated since that time?

MR. KELLY: Your Honor, because all we have is that tax form. We have none of the corporate records, financial records of the corporation.

THE COURT: Mr. Kelly, that form was prepared by Mr. Lampl or by a representative of Mr. Lampl's former law firm. [Page 9]

MR. KELLY: That is correct.

THE COURT: And Mr. Lampl as the trustee of Sunland Trust is now the sole shareholder of the debtor. If he doesn't have the records, who does?

MR. KELLY: Your Honor, as we indicated in our motion, it is our belief that the Hakims have those records.

THE COURT: The Hakims, if I understand the pleadings to date correctly, have not been involved in the operation or management of the corporation since it was sold to the Sunland Trust in 1979; is that correct?

MR. KELLY: In 1979 it was sold to Sunland Properties Trust Corporation.

THE COURT: Since that time, the Sunland Trust has been the sole shareholder?

MR. KELLY: That is correct.

THE COURT: Now you are saying when the property was sold not all of the records were turned over to the Sunland Trust?

(Pause)

MR. KELLY: Your Honor, when this was done the records were all left on the premises.

THE COURT: What premises?

MR. KELLY: At Virginia Mansions [Page 10] Apartments at that time because it later became the Virginia Mansions Condominium. The records were left there in the office.

THE COURT: Who owns that premises?

MR. KELLY: Well now, Your Honor, it is the Virginia Mansions Condominium Association that owns the common areas -- well, actually the unit owners own all of it through the association. They own their unit and their undivided interest in the common areas. It is now a condominium --

THE COURT: Fine. Trace the change of title backwards for me.

MR. KELLY: Before that it was the corporation that owned it. The corporation did a declaration of

condominium in 19 -- I believe the early part of 1980.

Your Honor, if you want to ask a question, Mr. Lampl is here. He might be able to answer these questions a little bit better than I can. He was the person who was present at the time.

THE COURT: Mr. Kelly, my only concern at this point in time is, number one, whether there are any records that exist; and number two, whether it's necessary to have any records that exist.

If the final federal tax return has [Page 11] been filed, Mr. Lampl in his capacity as trustee is the sole shareholder of the corporation has asserted several times before this court that the debtor has had no business operation since that time and he believed that it had been finally wound up and

resolved, and only recently found out that in fact it hadn't been finally wound up and resolved, what's the problem with making this the necessary certification to the Department of State?

MR. KELLY: Your Honor, if you will let me explain. When we did this transfer of ownership to Mr. Lampl as trustee --

THE COURT: Who is we?

MR. KELLY: When the transfer was done, the Virginia Mansions Apartments, Inc. from the Hakims, Mr. and Mrs. Hakim were the stockholders at that time. There was a stock purchase agreement to Robert Lampl as trustee of Sunland Properties Trust. He became the sole shareholder of the stock of that corporation. The records were maintained at Virginia Mansions Apartments, Inc.

They were left there. We did have access at that time to the records, and we did have physical control of the records. But Mr. Lampl did no have physical control of the records in his offices.

When the corporate dissolution process [Page 12] was begun, certain documents were filed with the Pennsylvania Department of State Corporation Bureau. It was to have been finished by the CPA for the corporation, Mr. Horovitz, and I understood that it was done.

THE COURT: That's not a correct assertion, Mr. Kelly. Based on the stockholder authorization from the minutes of the stockholders' meeting, it was directed specifically that the officers of the corporation would wind up its affairs, not a CPA, its officers.

MR. KELLY: Your Honor, Mr. Levine filed those things. He was to go over and get the file, the financial data from the CPA to be filed.

Mr. Lampl was under the impression that that had been accomplished. When we found out that it had not been accomplished recently -- we have been dealing with this in front of Your Honor -- we no longer had the records or access to those records.

It had been our belief at this time that it had been done. We cannot at this point without looking at those records make representation to the, although we believe everything was in order, to safely make those representations we believe that we had to have access to the records. We did not have that access.

THE COURT: Who is the accountant that had the records?

MR. KELLY: Jack Horovitz.

THE COURT: Is Mr. Horovitz still operating as an accountant for either the debtor or for the Hakims or for any other party in interest including the Sunland Trust?

MR. KELLY: Mr. Horovitz is still --

THE COURT: Then what is the problem contacting Mr. Horovitz as the owner of the corporation and getting the corporation's records, Mr. Kelly?

MR. KELLY: We have been, Your Honor, trying to get Mr. Horovitz to get us records in other matters besides this because there are matters now pending in the Orphan's Courts here in Allegheny County. There are matters pending as you

know, Your Honor, or are possibly aware, in Common Pleas Court, Civil Division, involving this corporation. But Mr. Horovitz has been uncooperative with Mr. Lampl in any of these aspects regarding this case.

Your Honor, I believe that he is still the accountant for Mr. Hakim, although I cannot swear to that. I understand that he still is. Possibly because there are somewhat divergent interests at this time, that might be the answer. [Page 14]

THE COURT: The one interest that does not appear to be divergent, unless I am misunderstanding the position of the parties, is that everyone seems to agree that this corporation's affairs should have been wound up approximately ten years ago. The only thing that remains

to be done in order to wind it up formally is to file the Certificate of Dissolution.

To the extent that documents exist and can be located and are the only stumbling blocks to the filing of that Certificate of Dissolution, I'm having a great deal of difficulty understanding why those documents have not been provided to Mr. Lampl, if he in fact doesn't have access to them on his own.

MR. KELLY: We do not have access to them on our own, Your Honor. I assure you that we do not have those records. We have not been given access to them.

THE COURT: Mr. Kelly, it seems to me as the owner of this corporation it's the obligation of the owner, if in fact the owner chooses, to wind up this corporation's business affairs at this

point in time and to take those necessary steps.

If it simply means contacting the Unemployment Compensation Bureau, sending them whatever affidavit is appropriate to indicate that the debtor [Page 15] has conducted no business and had no employees since 1979 and therefore owes no tax liability, filing a return to that effect, bringing a motion before this court pursuant to Section 505 and 525 of the code to have that tax return determined to be appropriate and then filing that certificate, then my question is, why has that not been done?

MR. KELLY: Your Honor, we had not done it because we could not get access to these records.

THE COURT: Mr. Kelly, that is an absolute inconsistency. You can get the

records by taking the necessary steps to get the records. If you can't get them from the CPA, you can get them from the taxing body. You have the authority to do that as the owner of the corporation. They are your records.

MR. KELLY: That's only one of the taxes, Your Honor.

THE COURT: That was my next question.

MR. KELLY: The unemployment compensation taxes you are talking about.

THE COURT: Well, what would be the difference between those taxes except that you will be dealing with different bureaus of the state with regard to withholding taxes or corporation taxes.

If none are owed because the debtor in [Page 16] fact has not conducted any business and has no property, what is the difficulty in filing a return to have it determined that in fact there are no taxes owed so that you can then file the certificate.

MR. KELLY: Your Honor, one of the difficulties is that we are saying -- the employees, I would agree with you we can probably establish that there were no employees at that time.

THE COURT: You can probably establish?

MR. KELLY: We can establish that. That one is not quite as difficult possibly as some of the others.

THE COURT: Where are the difficulties then?

MR. KELLY: Your Honor, because we don't know for sure on corporate taxes. For instance, other than unemployment compensation taxes that all of the -- financial anything that we might say can be backed up by the financial records themselves. They are going to rely on us to give them certain information, Your Honor.

THE COURT: Mr. Kelly, does the debtor owned any property and has the debtor owned any property since 1979?

MR. KELLY: To any knowledge, the debtor has not. [Page 17]

THE COURT: Has the debtor transacted any business since 1979?

MR. KELLY: No.

THE COURT: Has the debtor made any income since 1979?

MR. KELLY: I am not aware of any.

THE COURT: Then I do not understand the difficulty with filing a return, or asking this court to schedule a hearing to determine if it is an appropriate return and notifying the state taxing authorities of the fact that that hearing will be conducted. Let's put in issue, if it is an issue, and get it resolved.

You have got several choices by way of filing these certificates. If you can't dissolve it through the state because you are not certain in fact you can make those representations, then the state statutes will allow you to file the motions before the Court of Common Pleas for this very reason because sometimes things happen and you don't have the appropriate documents.

Have the steps been taken to file the wind up papers before the Court of Common Pleas?

MR. KELLY: I don't know that, Your Honor.

THE COURT: Well, Mr. Kelly, you are [Page 18] representing Mr. Lampl as the shareholder and this order is directed to him, so ask him.

(Pause)

MR. KELLY: Mr. Lampl tells me, Your Honor, that at the time that all of this was done it was his understanding that all of the necessary paperwork had been done and that all of the debts had been paid. Any obligations of the corporation which had to be paid in order to wind up its affairs and dissolve the corporation had in fact been paid. The only thing remaining was for the accountant to file

the certificate saying that that in fact was true.

Again, as I stated until just recently we were all under the impression that that had been done, but it apparently had not been done. We just did not want to take the responsibility of certifying something that we did not have any records to prove was true, although we believe it to be true.

Now, if the court wants us to do that under the -- at least saying to the best of our knowledge it is without us being really sure, then we can do that.

THE COURT: Mr. Kelly, I don't know what the state will accept in terms of the quantity of knowledge you have to have in order to make those [Page 19] representations. What I am suggesting is if it is an issue to determine whether or

not there are tax obligations due and owing, then prepare your returns. File a motion to have this court decide whether there are tax obligations due and owing, and I will do that.

This court has the authority and the power to do it, and I will do it in connection with this bankruptcy court. After that, you will at least know whether in fact you can file that certificate or not file the certificate.

MR. KELLY: We will do so, Your Honor.

THE COURT: Mr. Silvestri, does your client have any of the documents which Mr. Lampl contends may be in the possession of your client or his accountant?

MR. SILVESTRI: Yes, except duplicates of those are also with Mr.

Lampl. I would indicate to the court that in response to Mr. Lampl's motion to vacate the order requiring him to file, I attached as an exhibit a Certificate of Clearance from the Commonwealth of Pennsylvania, Department of Revenue, for purpose of dissolution dated September 25, 1981.

I would also indicate to the court that I have a closing sheet that was provided to my client. The name of the borrower is Sunland Properties Trust [Page 20] dated December 26, 1979. The purpose was an advance of $4,067,179.10 from Equibank. Mr. Lampl's signature appears on this as a schedule attached.

There are certain items to be escrowed. One of the escrowed items was to provide for any unknown tax liability. By way of additional information I have

in my files available today a photocopy of the first tax return filed by the Sunland Trust signed by Mr. Lampl and attached to that tax return is an exhibit which would be the Section 333 Internal Revenue Code paperwork that was signed, I think by both Mr. Levine as one officer, and Mr. Lampl as the shareholder.

THE COURT: Mr. Silvestri, pardon me, because you are losing me. Except for the first document, which is the Clearance Certificate, you are saying has already been issued by the Department of State?

MR. SILVESTRI: Yes. The exhibit to paragraph 4 (b), the document is entitled "Hakims Response to Lampl's Motion to Vacate Order." It's a fairly thick document and in the hurry of meeting the deadline rather than trying to designate

exhibit numbers I referenced the exhibit (handing document to the court) --

[Page 21]

THE COURT: Well, if this certificate has been issued and I can't tell from the Xerox whether it's a copy of one that in fact was sealed, although it's signed by names of people who are purporting to act on behalf of the Department of State, then what remains to be done to dissolve the corporation, Mr. Silvestri?

MR. SILVESTRI: I think the filing of the form with the Secretary of State.

THE COURT: Mr. Lampl, have you seen this Clearance Certificate which was issued and being shown to me now? It's on Commonwealth of Pennsylvania, Department of Revenue letterhead. It's captioned "Dissolution" and under that it

is written Clearance Certificate. It states company name, Virginia Mansions Apartments Inc., dated September 25, 1981, "I certify that the above company through this department has paid into the state treasury all bonuses, taxes and charges owed to the Commonwealth of Pennsylvania as required by law to and including December 31, 1979." It's signed by two people who purport to be acting on behalf of the Department of Revenue, Robert K. Bloom and Robert E. Madison.

(Pause)

MR. LAMPL: We don't have this in our [Page 22] file, Your Honor, Mr. Hakim could give it to us.

THE COURT: Do you have the original of this, Mr. Silvestri?

MR. SILVESTRI: I do not.

THE COURT: Do you know where the original is?

MR. SILVESTRI: I do not.

THE COURT: Mr. Lampl, you ought to be able to get a certified copy from the state at this point in time. If you can send them a copy and indicated that it's apparently been issued, this would seem to solve the whole problem with regard to the issue of whether there are any taxes due and owing.

MR. LAMPL: It may, Your Honor. Mr. Hakim has been through my files several times. There have been several incidents of documents being stolen. I have witnesses who will testify to that.

THE COURT: At this point I don't care who has the original. My only concern is to get the affairs wound up so at least we can eliminate the future

potential liability of this debtor for whatever is going to come based on the motion to dismiss, which will be argued later.

To that extent, Mr. Lampl, can you obtain a certified copy and now file the appropriate [Page 23] certificate of dissolution so that we can actually get this corporation wound up? I Am assuming this is a true and correct document. Obviously you will have to take some effort to verify that fact.

(Pause)

I am going to deny the motion to vacate the order and instead, Mr. Lampl, give you another 30 days to get this matter resolved with the Corporation Bureau. If you can't get it resolved, then file an affidavit that indicates what the problem is. At the end of that

period of time if you have to file tax returns and have them adjudicated here, then do it within that 30-day period.

(Pause)

Your motion for sanctions, Mr. Lampl, I believe was filed with regard to the response, the Hakims' response to this motion; is that correct?

MR. LAMPL: I believe the Hakims have a motion to dismiss. I felt incumbent to raise certain issues before the court, and it's filed simultaneously with a response to their motion and attached.

THE COURT: I wasn't sure which motion that motion for sanctions related to. That's why I was asking. It has not yet been scheduled. It will be scheduled at some point in the normal course. I wasn't [Page 24] certain with regard to

which motion your motion for sanctions was applicable.

MR. LAMPL: The essence was the Hakims claim that they came here with an involuntary petition. They have made various I think inconsistent representations to Your Honor to their purpose and motive and goals using this court's jurisdiction.

I thought the court should see before it various different positions they have taken and counsel has taken regarding this debtor in the various proceedings. And to also point out to the court and all the parries in interest, that the Hakims have executed indemnifications for any outstanding claims or debts due and owing by the debtor including the specific mention of tax liabilities which were at that point

in time not matured. At the time of execution of indemnification not matured by inchoates. So all the taxes have been paid and since matured.

They also have made various indemnifications that survived any closings which you will see is complete to the agreement regarding conditions of the building and compliance with applicable zoning and building codes and so forth, which is really the essence of an outstanding claims by the condominium association. [Page 25]

I felt whatever the court deems appropriate is fine, but the trustee should see those documents. The court should be aware of the processes that lie behind this bizarre case.

THE COURT: Well, it will be scheduled in the normal course. I will

hear the responses and the argument on that motion at some other time when it is appropriately before me.

MR. CHRISTMAN: Your Honor, I would just like to say that that motion is intrinsically tied to the Hakims' motion to dismiss and our motion to dismiss and I don't see how it can be separated from the issues that are before us today.

THE COURT: The motion for sanctions?

MR. CHRISTMAN: Yes. The issues that are raised are in response to the Hakims' motion to dismiss and the facts that emerged are directly relevant to our motion to dismiss.

THE COURT: In terms of the factual material to the extent there is testimony which is going to be offered today, it may deal with the issue of sanctions

inasmuch as you are prepared to go forward on that issue.

The problem is I just received that motion, and I have not had an opportunity to require [Page 26] responses to it nor to enable parties to prepare for it. If you are all prepared, that's fine. I read it and I'm aware of what it alleges and I am more than willing to have the testimony or argument on that motion as well today. But I'm not going to compel that because it has not been scheduled.

You gentlemen and the lady can tell me your preferences. Do you wish to go forward with your motions for sanctions today as well? Mr. Lampl, it's your motion. Would you prefer to proceed with it today, or are you prepared to proceed with it today?

MR. LAMPL: Yes. Most of the matters are documentary, and the witnesses that we would proffer are here, other than we attempted yesterday to subpoena Janet R. Hakim and Elias J. Hakim, Jr, Elias is here. We had prior to that through counsel requested that he produce or accept subpoenas for both of them. As I understand it, Mr. Silvestri would not do that.

We had a process server at their home for some three or four hours yesterday. He saw them in the home, but they refused to answer the door. He left the subpoenas on the door. We think both of those parties should be before the court, and they are petitioning creditors. I believe the court has [Page 27] jurisdiction to compel their Appearance.

THE COURT: To the extent that you need additional testimony over and above what has gone on today, Mr. Lampl, I will in fact compel the testimony if you are asserting that they are indispensable witnesses to your case.

With regard to the sanctions motion -- is that what we are discussing, the sanctions motion?

MR. LAMPL: Yes.

THE COURT: However, I will let you make that motion at the end of today's testimony if you still feel it's appropriate, and I will consider it at that time.

Mr. Silvestri, are you prepared with regard to the motion for sanctions which Mr. Lampl has filed?

MR. SILVESTRI: Not fully. However, I have no objection to proceeding to get as far as we can today.

I will note for the court that my client's plane ticket shows that he came back last night. Presumably very late at night when Mr. Lampl's process server wouldn't have been there and therefore, he couldn't have seen him. Mr. Hakim has come here voluntarily.

THE COURT: This case has been [Page 28] scheduled for quite some time. There is really no reason to try to serve somebody a subpoena one day before when this has been scheduled for several months. But in any event, Mr. Silvestri, your client will be directed to appear without the necessity of a subpoena if in fast it is necessary with regard to the motion for sanctions or any issue in your

case as well which the debtor must defend.

MR. SILVESTRI: I understand.

THE COURT: The next thing I Would like to hear is simply -- well, I was going to do the argument on the motion to dismiss brought by the Hakims. But perhaps that ought to wait until after the evidentiary hearing.

Will the evidence to be presented be relevant to both motions?

MR. SILVESTRI: I would think so.

THE COURT: We will go forward with the evidence and then hear argument at the end of that time.

MR. KELLY: Your Honor, if it please the court. With reference to this motion for sanctions, it certainly is our preference, Your Honor, that if we are going to have a hearing on it we have a

hearing on it. But we don't have parts of hearings today and parts of hearings later. [Page 29]

If it be necessary for people who are not prepared to proceed today in full on it, then we would ask the court to schedule argument on it for a later date when we can all be prepared fully to go.

THE COURT: Mr. Kelly, I don't know how long the hearing on the motion to dismiss is going to take. So I can only deal with one testimony at a time. In the event we don't get through all those witnesses, it will be continued to a later date.

In any event we are going to start on the motions to dismiss. Is there some problem with regard to witnesses who are appearing on the motion to dismiss also testifying with regard to the various

sanction motions that are pending before me while they are on the witness stand as opposed to coming back?

MR. SILVESTRI: I see no reason why we can't be thorough with every witness who takes the stand.

THE COURT: Does anyone have any objection to that procedure?

(Pause)

Then that's how we will proceed. As each witness is called, they will testify to any matter which is relevant which is currently pending before the court and brought by any party. [Page 30]

The first motion to dismiss as filed was brought by the condominium association. So we will begin with the testimony on that motion. We will proceed with testimony in the following order:

The Association will present its case in chief first. Then the school district and Scott Township. Then the Hakims. Then Mr. Lampl, to the extent that Mr. Lampl is a party in any way to the motions to dismiss or sanctions. Then finally Mr. Bernstein, in the event that he has any testimony or any questions that he seeks to introduce.

So either mr. Christman or Ms. Feldman.

MR. CHRISTMAN: Your Honor, I wanted to point out that your order of December 2, 1988 in setting up the hearing on our motion, you ordered that first it would be a burden on the petitioning creditors to go forward with evidence of the debtor's ability to be a debtor before the court and for them to be a petitioner under Section 303 of the Bankruptcy Code.

THE COURT: Mr. Christman, with regard to the issue of the debtor's ability to be a debtor, I have received a brief from Mr. Silvestri on that issue. I have read the brief and I believe the cases that were cited with regard to that issue. I am satisfied that the debtor has the capacity to be a debtor. [Page 31]

The issue then I guess would be whether or not there is a debt.

MR. CHRISTMAN: That's right. Also included in your order which says, and the status of the debts listed in the petition and schedules filed in the case. Then the burden goes to us.

THE COURT: All right. We will switch the order. Instead of ending with you, Mr. Silvestri, we will begin with you. I think he is correct that I did so

order, and that is probably a more appropriate way to proceed.

MR. SILVESTRI: I call Mr. Lampl as my first witness.

MR. KELLY: Your Honor, I would ask for a proffer with regard to the calling of Mr. Lampl.

HR. SILVESTRI: I believe that the only reason why the debt is challenged is because there was a Confession of Judgment filed of record in the court of Common Pleas of Allegheny County against the Sunland Trust to which Mr. Lampl docketed a petition to open or strike the judgment which he has made of record in this case.

In respect to that particular petition, I would note for the court that it was never approved by any judge in the Court of Common Pleas as a practice

[Page 32] whereby a Judge either notes on the proposed order that a rule is issued to show cause or in the alternative, the petition is denied.

What I did in compliance with Your Honor's order was file a brief as to what standard we look at to determine whether the debt is legitimate. In that same brief I also addressed the issue of insider. I think the issue of insider may be resolved as a matter of law.

In respect to whether my client is a proper debtor or not, I think that goes to the allegations of Mr. Lampl that say that certain payments have been made. What I intend to do with Mr. Lampl is review certain documents signed by him, and review that to determine whether the same is really in good faith or not.

THE COURT: You are talking now, however, about debts with regard to this debtor, not debts with the Sunland Trust; is that correct?

MR. SILVESTRI: That is correct.

THE COURT: To the extent that Mr. Lampl has asserted that debts have been paid and that there is no debt owed by the debtor, that is a legitimate scope of Mr. Lampl's examination and that much will be permitted. [Page 33]

To the extent that you will attempt to get into the items involving the Sunland Trust which do not bear on the issue of the debtor's debts, that is not a proper subject for this hearing at this time and those questions will not be permitted.

Do you have an objections

MR. KELLY: Your Honor, with regard to these matters on this motion to open or strike that judgment, there have been proceedings in the Court of Common Pleas of Allegheny County. It is our feeling in those proceedings we have attempted to get discovery which has been resisted by the Hakims. There have been depositions set up and failure to show on their part. There have been court ordered depositions for which they have not shown.

We were to get an accounting and none of those have we gotten.

We don't feel under those circumstances then, that it is proper to ask Mr. Lampl questions about this when he has been unable to get court order discovery material in order to help him in this case so that he could properly

advise this court or any court of the situation that exists.

THE COURT: I already indicated that I was not going to allow any testimony concerning debts [Page 34] of the Sunland Trust, only of the debtor, Mr. Kelly.

MR. KELLY: We are talking about his claim, the corporation's, Mr. Hakim's claims.

THE COURT: Against the debtor.

MR. KELLY: Yes.

THE COURT: The claims against the debtor to the extent that they have been paid would invalidate this bankruptcy. Therefore, any party who has knowledge of the fact the debtor has no debts is irrelevant and not a proper witness.

Mr. Silvestri's proffer was that Mr. Lampl has this knowledge and therefore had testimony which is relevant to the

issue of whether or not the debtor has debts.

MR. KELLY: But our position is that Mr. Lampl does not have all the knowledge which he should have in order to properly testify because he has sought discovery in that area and the Hakims --

THE COURT: Mr. Kelly, there have been no motions for discovery brought before this court by Mr. Lampl. Had they been, I'm sure that Mr. Lampl is well aware of the fact that I would have granted them. I have granted them on behalf of Mr. Silvestri. That objection is overruled.

MR. KELLY: Your Honor, this was discovery [Page 35] that we were talking about in the Common Pleas Court.

THE COURT: You are not in Common Pleas Court, Mr. Kelly, you are in

bankruptcy court and this is a bankruptcy issue. You have discovery rights here. To the extent that you need discovery, there has been no motion before me. That objection is overruled.

Mr. Lampl, you are a proper witness with regard to a limited area of whether or not this debtor has in fact paid its debts.

- - -

ROBERT LAMPL having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SILVESTRI:

Q. Your name is Robert O. Lampl?

A. Yes.

Q. And as of today, you are the trustee or the Sunland Trust?

A. Yes.

Q. And the record shareholder of all of the outstanding issues of stock of the Virginia Mansions Apartments, Inc.?

A. It was conveyed to me in 1979 when the corporation was dissolved, me, as a trustee which is an [Page 36] inter vivos irrevocable common-law type trust.

Q. Now in respect of that stock purchase there was a stock purchase agreement, was there not?

A. Yes.

Q. That was dated October 1, 1979?

A. I can't say off the top of my head.

Q. I have a copy of it in front of you as an exhibit to a motion that you filed. The party to that is yourself in your capacity as trustee of Sunland Trust; is that correct?

A. (No response)

THE COURT: Mr. Silvestri, show the witness the document if you expect him to refer to it and mark it for the record, please.

MR. SILVESTRI: It has been marked as Exhibit C to Mr. Lampl's response to the Hakims' motion to dismiss.

MR. LAMPL: What is your question?

BY MR. SILVESTRI:

Q. The parties are you as trustee and Elias J. and Janet R. Hakim as sellers with the subject matter being the purchase of all of the stock in Virginia Mansions Apartments, Inc.; is that correct?

A. Yes.

Q. Now before I get into certain provisions of [Page 37] this agreement, will you admit that Virginia Mansions Apartments, Inc. is a guarantor of the

obligations of the trust to Mr. and Mrs. Elias J. Hakim?

A. That was the concepts subject to their indemnifications regarding the conditions of the building, payment of all outstanding claims, as well ag continuing indemnifications regarding tax obligations.

Q. Well, we can get into the indemnifications --

A. As far as unconditional guarantee, I am trying to give you a complete answer.

Q. Will you turn to paragraph 2.3 of the stock purchase agreement.

A. (Witness referring to document)

Q. Does not paragraph 2.3 state that Virginia Mansions Apartments, Inc. shall guarantor the note issued by the Sunland Trust to Mr. and Mrs. Elias J. Hakim?

A. Specifically it says --

Q. You may read it if you choose to do so. The two sentences in subparagraph 2.3.

A. Specifically it says, "The balance of the purchase price in the amount of $6,450,000 shall be evidenced by the purchase money mortgage note. Said note shall be executed by the buyer and guaranteed by VMA," which is Virginia Mansions Apartments, Inc. "And [Page 38] such guarantee Shall be secured by a mortgage on VMA's real property." Of course, the rest of the agreement provides obviously for indemnifications and warranties.

Q. That's correct.

Now, was there a purchase money note and mortgage actually issued?

A. Yes.

Q. And the note was made by -- I'm sorry. The note was made by the Sunland properties Trust executed by you as trustee; is that correct?

A. I'm sure that's the case. I don't have the file with me, but I'm sure that's the case.

Q. With respect to the mortgage, the mortgage was made by Virginia Mansions Apartments, Inc.; is that correct?

A. I am not certain.

Q. You don't knows?

A. I am not certain. I think the mortgage may have been put on before the --

Q. Transfer of the property?

A. Well, I don't know that the property was transferred as such. It was a condominium declaration. I would have to look at the title documents. But a

mortgage was put on to the benefit of Elias J, and Janet R. Hakim. It was at some point in time subordinated [Page 39] to a series of mortgages through Equibank for obligations which they guaranteed for the condo rehabilitation and construction costs.

Q. Now in respect to the terms and conditions of the purchase money note by the trust as guaranteed by the debtor corporation, aren't those contained in paragraph 3 of the stock purchase agreement?

A. I don't know.

Q. Will you look at the stock purchase agreement in paragraph 3?

A. Yes, but I don't have the note in front of me.

Q. My question is, whether or not the stock purchase agreement provided for note terms?

A. I would assume they are consistent.

Q. So that we understand about these documents, was it not your law firm, Campbell, Lampl & Levine that drafted the noted? If not, who did?

A. I don't know, I probably did.

Q. Would anyone else have drafted that note?

A. Bob Hackett could have done it. I don't think he did. There would have been participations by some tax consultants and a couple tax lawyers. But we would have ultimately done it, reviewed and approved it.

Q. With respect to this very stock purchase agreement we are discussing

right now, did not Campbell, [Page 40] Lampl & Levine, your law firm draft that?

THE COURT: Mr. Silvestri, does it really matter? We are hare to discuss whether or not there are outstanding debts. Who drafted the agreement at this point in time appears to be very irrelevant to the issue of whether or not there is a debt outstanding.

MR. SILVESTRI: I am taken by surprise with the lack of memory by the witness.

THE COURT: MR. Silvestri, I am surprised at the whole scope of the proceedings here, but I still think it is irrelevant. Please move on to the issue of debt.

Mr. Lampl, there was an indication that $50,000 was to be conveyed. Was there in fact a $50,000 payment against

this stock purchase agreement as provided in the terms?

MR, LAMPL: I think so. Mr. Silvestri is half right and half wrong. All the vivid details I would have to work on my memory for that But I do know the structure of this thing was examined by numerous people, and I believe Junior Hakim had funded the trust for $50,000.

There were also some lots and other properties put into the trust. I think that same $50,000 was used to make this payment, but I 'm not [Page 41] certain of that. Those lots were ultimately conveyed to one or more of the Hakims.

BY MR. SILVESTRI: Will you turn to paragraph 8 of the stock purchase agreement, please.

A. (Witness referring to document)

Q. And I ask you whether that paragraph entitled "Indemnity" is the indemnification to which you have been referring to during your testimony thus far?

A. Just one of them.

Q. Is there another in this particular agreement?

A. I don't know. Do you want me to read it?

Q. I am just asking --

A. I could tell you that I'm certain that there are indemnifications between this thing and the agreement creating the trust by both Janet and Elias Hakim for all tax obligations then owing or in the future.

There are indemnifications for any claims, warranties, or things like that concerning conditions of the building

and/or compliance of the building with all applicable building and safety type codes. There are also indemnifications and representations that all debts have been paid and that the corporation was debt free. Those are the three types [Page 42] of indemnifications.

I am also certain they have survived the closing. Now if you want me to get the chapter and verse on them, I will take the time to do it. We can point them out, although the documents are before the court. I am sure anybody reading this stuff will see that I'm right.

Q. Mr. Lampl, I'm only interested in chapter and verse on whether this paragraph 8 is the only indemnity provision in this stock purchase of which

you have an awareness right now as you sit on the stand giving testimony.

A. I am certain that between this and the trust there are those three forms of indemnifications. No, this is not the only one. I don't know whether it all appears in this particular document or if you have to read the two of them together, but I am certain all three of those forms of indemnifications exist.

Q. But you don't know whether the other two are in this document?

A. I'm going to ask the court to allow me to take time and read everything if I have to give an opinion on answer like that.

THE COURT: The answer is, he doesn't remember, Mr. Silvestri.

[Page 43]

BY MR. SILVESTRI:

Q. Now in respect to this paragraph 8 entitled "Indemnity" the second sentence states, "The foregoing indemnity shall survive the closing, but shall be limited to liabilities of which the sellers shall receive notice in writing from the buyer." Is that correct?

A. That's what that says.

Q. Now in respect to all of these indemnifications which you have been discussing of which one of them is contained in paragraph 8 of the stock purchase agreement, do you have any specific recollection of a specific writing which triggers any indemnity of any matter with respect to the Hakims?

A. We filed pleadings in the Common Pleas action incorporating the claims of Virginia Mansions Condominium Association and this stove claim for indemnification.

I have asserted setoffs against anything the Hakims would claim to be owed by Virginia Mansions Apartments, Inc.

Q. Let's take the pleadings you referenced first. Specifically what pleadings were you talking shout that you are now characterizing as a writing claiming indemnifications on behalf of Virginia Mansions Apartments, Inc.?

[Page 44]

A. Our answer to new matter.

Q. In what as se ?

A. I don't know. It was filed. You know the case. Are you trying to get information from me, or are you trying to -

Q. I'm trying to identify the pleading.

THE COURT: Gentlemen, you will not argue with each other. If you have a

comment you have a lawyer, Mr. Lampl, who will make objections on your behalf.

Mr. Silvestri, you will not badger the witness. Would you please get on with the question of whether there are debts and whether they have been paid. So far we have had 15 minutes of testimony, and we haven't yet touched on the issue of the debts or payment thereof.

MR. SILVESTRI: May it please the court. I have made a review of the petition to open or strike the judgment in Common Pleas Court.

THE COURT: Which judgment, Mr. Silvestri?

MR. SILVESTRI: That would be the judgment that was entered against Sunland Trust. In respect to that, there is a listing of different items of setoff

credit or indemnification on the note. One of the items claims a $4,000,000 credit. Another one [Page 45] of the items claims the conveyance of the adjacent property to which I alluded in the very first argument that we had,

I am merely trying to find out whether what Mr. Lampl claims today as an indemnity was something that was really triggered as an indemnification by giving written notice under this. If Mr. Lampl had not given written notice of the invocation of the indemnity at a reasonable point in time --

THE COURT: Pardon me, Mr. Silvestri. Mr. Kelly, what are you doing? There is a witness on the stand.

(Pause)

THE COURT: You may proceed, Mr. Silvestri.

MR. SILVESTRI: If Mr. Lampl had not given reasonable and timely notice of the triggering of the indemnification, I think that the Court may determine that the allegation made in the petition to open or strike the judgment against Sunland Trust is nothing more than a sham and made in bad faith.

THE COURT: That may well be. The only problem is that that note is not a note of this debtor and therefore, all of this line of argument and testimony to [Page 46] date has nothing to do with whether this debtor owes a debt.

MR. SILVESTRI: Except, Your Honor, I have already established through the testimony of Mr. Lampl so far that the debtor is in fact a guarantor of that note.

THE COURT: You have established that there are limited guarantees subject to certain indemnifications. However that does not mean this debtor has a debt or any liability on that note and consequently, this debtor is not the primary obligor on the note.

My understanding of the pleading to date is that this debtor may have given mortgage against certain property which it may or may not any longer own. But it has no note obligation except possibly some guarantee which conversely is subject to the indemnification.

Now, unless you can establish there is some obligation on that mortgage which has no note accompanying it, Mr. Silvestri, I am not sure where we are going on this.

MR. SILVESTRI: Your Honor and I have had argument over that before. The position on the actual mortgage instrument itself has not changed since the last argument. The mortgage instrument itself [Page 47] incorporates the note.

THE COURT: I haven't seen the mortgage instrument, so I don't know that. Why don't we start with an introduction to mortgage and let's find that out as a fact.

MR. LAMPL: Could we truncate this whole process by following up on a suggestion Your Honor made which was perhaps that Gary Hakim is not the proper responsible officer. If I was willing to step into that position without getting --

MR. BERNSTEIN: Your Honor, I cannot hear Mr. Lampl.

THE COURT: Could you come forward, Mr. Bernstein.

(Pause)

MR. LAMPL: I am making a suggestion that we could truncate this process quite a bit since I think the trustee has a serious interest in pursuing these indemnifications and so forth. If I were to follow the court's suggestion that I become the responsible officer and step into the shoes of the debtor, convert this to a voluntary case Chapter 7, then I believe Mr. Silvestri's problems about whether he is a proper debtor or not or petitioning creditors would be academic other than the issue of whether this [Page 48] stuff was filed in good faith by following the sanctions.

We could then go along two parallel paths and get on with the affairs. I would fully cooperate with the trustee and pursue these indemnifications making sure taxing bodies and 80 forth are paid by the indemnitors. Then we could deal with the sanctions aspect of this case in due course. That would obviate the whole question of whether this was proper or improper and voluntary and whether or not their debts were liquidated and undisputed and all those ancillary issues. That would save a lot of time regarding getting to what we were going to do anyway, which is pursue these indemnifications.

I think that could be in the hands of an independent court appointed trustee who we would fully cooperate with, giving all the assistance we could, provide all

the documentation, all the letters that Mr. Silvestri is looking for and any kind of discovery and get on with the affairs of collecting money for the creditors.

MR . CHRISTMAN: Your Honor, there is nothing here for the court to administer and this case shouldn't be here. It is holding up our case in Common Pleas Court. I don't understand the purpose of [Page 49] having this debtor in a bankruptcy which hasn't operated since 1979. If everyone says there are no assets, then why would we have a bankruptcy.

THE COURT: Mr. Christman, I don't know whether there are assets. From having looked at the pleadings and the documentation which has been before the court which admittedly is incomplete, it appears in fact this apartment complex

may well still be in part at least the owner of certain properties.

There appear to have been conveyances which do not appear, at least from the documents currently before the court, to have been authorized by the then officers or board of directors of the corporation or subsequent entities involved. That is the reason why I am reluctant at this point to dismiss this case.

If in fact it turns out that there are no assets and if in fact it turns out there are no creditors, then, of course, this case is not properly before this court. But there may well be creditors and there may well be assets.

The court is not able to determine that without an evidentiary hearing or the submission of some other documents.

That is why we are here, for that purpose. [Page 50]

MR. LAMPL: I can give you my view on this, if it's helpful.

THE COURT: Let me here from Mr. Bernstein about your suggestion, Mr. Lampl. I don't know whether this will eliminate any of the trustee's problems.

MR. BERNSTEIN: Your Honor, I have one problem at this point, and that is, trying to track the asset that existed in 1979.

There was a corporation, Virginia Manor. The Hakims owned the stock. The Hakims sold the stock to Hr. Lampl as trustee. Then Virginia Mansions was in effect dismembered, and the property was dismembered and sold to the individual condominium owners. They paid a price for it. What happened to those dollars.

Who got those dollars. Because if those dollars went to the Hakims, it had to be in payment of the six-and-a-half million dollars.

THE COURT: That seems to be the problem with this case, Mr. Bernstein. It seems to me that Mr. Lampl has been willing to substitute. As the sole stockholder, obviously you have voting capacity powers. To the extent that this still is a corporation and have put in a managing officer, it would appear that you would be the appropriate person with the knowledge and [Page 51] documentary control.

If you were willing to do that, it would appear to me at this point, unless I hear some objection from someone to the contrary, that that would be an appropriate substitution to make. It

would also appear to be an appropriate item to perhaps grant the relief from stay to allow the state courts to determine in fact who are legitimate judgment creditors, lienholders, stakeholders, or whatever, and then process the rest of this bankruptcy.

MR. LAMPL: The problem with that, Your Honor, the relief from stay, there are no funds available here. Who would be the party to defend these actions.

I can tell you my clear opinion, and I believe I will be borne out by all the documentation, is that there are no assets in this estate or in this corporation. At the time of the conversion I believe every known claim was paid and none surfaced.

THE COURT: You mean the dissolution?

MR. LAMPL: The dissolution followed by a condominium declaration that title goes to the selling of the properties by the trust which it declared on the unit property act. We filed a declaration of condominium. [Page 52]

This thing was looked up and down by bank attorneys and a couple of tax consultants and so forth. It was then renovated, not structurally, which would be germane in their case. No structural changes, but it was cosmetically renovated, cleaned up and so forth with borrowed funds. There was a sales campaign and the condominiums were sold to the public. Some were conveyed to the Hakims, and that's where the offices were that Mr. Kelly was alluding to. All the debts were paid.

There was a then pending action by the taxing bodies regarding the real estate assessment, the real estate taxes. That was not resolved until 1985, and hence all these indemnifications were granted to make certain that the entity and trust would be protected. All taxes were paid up through that time.

Ultimately the taxes that I believe affect the property as such were paid. That is a matter of dispute before Judge Wettick. There are outstanding taxes which I do not think affect this property. I think part of the problem we had in sorting this out up the street there were people who just don't understand the effect of the liens. But those tax obligations do exist. They are in a range of a quarter of a million dollars to three or four hundred thousand

[Page 53] dollars. Those are the claims that are indemnified by the Hakims.

The only other claims that I know of against this entity, this debtor, is this cause of action brought by the condominium association. There is a lot of debate at to whether that's proper or wellfounded and so on. But in that cause of action there is an allegation made that the condominium, the building itself is out of compliance with applicable zoning and building codes.

Again, the Hakims specifically indemnified and warranted and supervised the closing and so on. Those claims are inchoate at this time. They await for trial

So I think what you would find and the trustee would find, and he's free to get into all this, we have had

accountings, we have had disputes, we have had problems getting the other side to comply with court orders. But I think when you boil it all down the corporation with no assets was dissolved, or at least effective as we represented that it guaranteed this obligation. But I think the court's analysis that it is valueless to the shareholders unless it makes certain that they have some assurance of payment.

Since all the debts had been paid you [Page 54] will find that the guaranteed balance, whatever is owed to the Hakims, is a hotly disputed item. It is obviously subject to setoff for all these other matters. The trustee would then be looking at, when you boil it down and examine all the papers, the debtor which owes taxes. The debtor which is

the defendant in this bizarre and complex litigation by the condominium association.

There are no funds on hand, but the debtor is indemnified by the Hakims who do have deep pockets and are husband and wife here. They have very significant assets and wealth. So the trustee would be looking in essence as a trustee for taxing bodies and maybe the condominium association, but he also would be defending that to get reimbursed by the Hakims.

There is a lot to do to defend that case. As I understand, the condominium association has spent upwards of 70, $80,000 on legal fees already themselves not counting the other parties in the case.

THE COURT: With regard to whether or not a trustee/trustee in the case would have to step into a state court action, I'm not at this point going to make that determination. It seems to me that the relief from stay is granted and the trustee can certainly abandon at least for purposes of a conclusion or waive [Page 55] appearance on behalf of the debtor, and the debtor can deal with its own legal problems in terms of its representation.

If the debtor has no assets and chooses not to appear at a state court action, I guess that's the decision that was made whether or not a bankruptcy was pending. I'm not going at this point to force the Chapter 7 trustee to enter an appearance and defend that litigation. That's something That Mr. Bernstein can

decide on his own and request appropriate approval for.

If it is a no asset case, it would seem there is no point having a Chapter 7 trustee defend. If in fact Mr. Bernstein thinks it is an asset case and chooses to defend it, I think as a representative of the estate he can certainly do that. But I don't think that's something that needs to be decided today at this point at least with regard to the issue of whether or not this case should be converted voluntarily to a voluntary Chapter 7.

Mr. Silvestri, do you have any reason to object to Mr. Lampl's substitution for Gary Hakim as the designated officer or responsible party on behalf of the involuntary debtor?

MR. SILVESTRI: No. [Page 56]

THE COURT: Does anybody have any reason to object to that suggestion?

MR. CHRISTMAN: I don't object to that suggestion in and of itself. I just don't think that it resolves the question of whether or not this involuntary petition was brought in bad faith.

THE COURT: It does not resolve that issue, and that is not an issue which could in any way be involved in the substitution of those people, Mr. Christman.

Mr. Bernstein, do you have an opinion?

MR. BERNSTEIN: I favor that. I would like to tell the court that I would now orally move to vacate my trustee's report of no distribution that I filed in October. So that I may continue in this case, I would like to tell the court that

I would also want to meet probably separately and apart with the various parties to try and track what has happened, and then maybe have a joint meeting with them and get it all on the table so that I can maybe make a more intelligent decision about what is best for the system, for the debtor, for the estate, and for the trustee.

THE COURT: All right. Your oral motion to vacate your report of no distribution is granted.

MR. SILVESTRI: Your Honor, I would also [Page 57] think it appropriate for the Hakims to withdraw their motion to dismiss the case.

THE COURT: Just a minute, Mr. Silvestri. I will get to that next.

Mr. Lampl's oral motion -- I take it it was your motion to substitute yourself for Mr. Hakim at this point in time.

MR. LAMPL: I am willing to do so.

THE COURT: Mr. Lampl's motion to substitute as the designated representative of the involuntary debtor in lieu of Gary Hakim is granted.

Now, Mr. Silvestri, you want to move to dismiss your motion to dismiss?

MR. SILVESTRI: That is correct, Your Honor.

THE COURT: Your motion is considered withdrawn?

MR. SILVESTRI: Yes, Your Honor.

THE COURT: The Hakims' motion to dismiss is dismissed.

Mr. Christman, is your motion to dismiss the involuntary still pending?

MR. CHRISTMAN: Yes.

THE COURT: Then the next question before I get to that that I wish to address is whether [Page 58] or not this case ought to be converted voluntarily to a voluntary Chapter 7. Mr. Bernstein, do you have any reason to see why it should not?

MR. BERNSTEIN: Your Honor, to facilitate all matters I have no objection to it.

THE COURT: Mr. Silvestri?

MR. SILVESTRI: I have no objection.

THE COURT: Your clients are in accord and you have no objection to conversion of a voluntary Chapter 7 case?

(Pause)

MR. SILVESTRI: Yes, Your Honor.

THE COURT: Yes, they are in accord?

MR. SILVESTRI: My clients do not object to converting the case from an involuntary to a voluntary.

THE COURT: All right. Mr. Christman?

MS. FELDMAN: Your Honor, if I may. Subject to our objections in that we would like to pursue our motion to dismiss in terms of damages the association has suffered up until this time. We would have no other objection to this being a voluntary Chapter 7.

THE COURT: All right. All pending motions for sanctions with regard to the good faith [Page 59] filing will survive the conversion of this case to a voluntary Chapter 7.

Mr. Federline, do you have a position you want to state for the record?

MR. FEDERLINE: I have no objection, Your Honor.

THE COURT: Then the involuntary debtor's motion to convert this case to a voluntary Chapter 7 is granted.

(Pause)

Mr. Bernstein is then approved as Chapter 7 trustee.

Now, Mr. Christman, with regard to your motion to dismiss, are you going to pursue a motion to dismiss the voluntary Chapter 7 in bankruptcy?

MR. CHRISTMAN: No, Your Honor,

THE COURT: You are not going to.

MR. CHRISTMAN: But I will be filing a motion for relief from stay to proceed with the state court action.

THE COURT: I would like to discuss that matter now because it seems to be that there is very little reason not to

grant that motion for relief from stay. I would like to hear from the trustee. I'm not sure he is in a position to know whether he can consent [Page 60] to that or not at this time,

MR. BERNSTEIN: Your Honor, I would be talking through my proverbial hat if I tried to address that now.

THE COURT: In that case, Mr. Christman, proceed with your motion and it will scheduled in due course.

All right. With regard to motions for sanctions, Mr. Lampl, are you going to pursue your motion for sanctions?

MR. LAMPL: Yes.

THE COURT: Mr. Christman, are you prepared to address the damages and sanction issues today?

MR. CHRISTMAN: Yes, Your Honor.

THE COURT: Are you as well, Mr. Lampl, prepared to go forward?

MR. LAMPL: I would suggest Your Honor we would like to have Janet R. Hakim and Elias J. Hakim in court when we present our underlying evidence.

THE COURT: In that case, Mr. Lampl, you are excused from the stand because your testimony along the lines for which you were called as a witness based on the proffer is no longer necessary.

Mr. Christman, you may proceed on your [Page 61] motion -

MR. CHRISTMAN: Your Honor, I'm not sure I agree with that. I think that what Mr. Lampl said on the stand is relevant to our motion.

THE COURT: You are free to call Mr. Lampl as a witness. Mr. Silvestri's

motion has been withdrawn, and this is no longer an involuntary case.

Mr. Lampl was called as a witness to substantiate whether or not there are debts of the corporation which are due. That's no longer an issue which is before me.

MR. CHRISTMAN: Mr. Lampl was called because the order says it shall be the burden of the petitioning creditors to go forward to establish the elements of Section 303 of the Bankruptcy Code have been established.

THE COURT: That's right.

MR. CHRISTMAN: Mr. Lampl wasn't called to see if there were any debts. He was called to see if there were any debts owed to the Hakims. Now, obviously there are debts. The school district has

debts. There are debts owed to the school district.

Mr. Lampl was called to see whether or not there were debts owing by Virginia Mansions Apartments, Inc. to the Hakims. The line of questioning [Page 62] that we were going on there is entirely relevant to -

THE COURT: You are free to call Mr. Lampl in your case to substantiate your damages if this is relevant to your damage case.

MR. CHRISTMAN: Okay.

(Pause)

THE COURT: You may proceed.

MR. KELLY: If he is going to call him now, I will ask for a proffer so we know what we are supposed to be testifying about.

MR. CHRISTMAN: I'll only be asking two questions. One is whether or not any guarantees were signed over to Virginia Mansions Apartments, Inc. to the Hakims. And the other is with regard to who signed the note that is the subject of this matter.

MR. KELLY: We have no objections to that, Your Honor.

THE COURT: All right. Mr. Lampl, you are still under oath.

MR. CHRISTMAN: Your Honor, as far as our proffer, I would also like to ask if he was requested by Mr. Silvestri to file a voluntary petition and what his response was.

THE COURT: Mr. Kelly, as amended, do you have any objections to those questions? [Page 63]

MR. KELLY: No.

THE COURT: All right. You may proceed, Mr. Christman.

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CROSS-EXAMINATION

BY MR. CHRISTIAN:

Q. Mr. Lampl, in your previous testimony Mr. Silvestri showed you a stock purchase agreement which referred to certain obligations which would be guaranteed by the Hakims.

To your knowledge, did you or anyone on behalf of Virginia Mansions Apartments, Inc. sign any guarantees to the Hakims?

A. I probably did. I will put it this way. I think that was effectuated in the provisions we were referring to before the court to some degree. There was a note from the trust to the Hakims and in

some manner there is a guarantee from Virginia Mansions Apartments, Inc.

There may only be a mortgage note, I'm not sure. I don't know what they actually got. I can't tell you with certainty whether they actually got a note or a document called a Guarantee from Virginia Mansions Apartments, Inc. It may have only been a mortgage. [Page 64]

Q. I am handing you a certified copy of a complaint of Confession of Judgment which was filed in the Court of Common Pleas of Allegheny County captioned GD No. 87-7452, Elias J. Hakim, Jr. and Janet R. Hakim versus Sunland Properties Trust and Robert 0. Lampl, Trustee.

Have you seen that before?

A. Yes.

Q. Tell me whether attached to that complaint as an exhibit -- there is a mortgage note attached to that exhibit; is that correct?

A. Yes. We use the term mortgage note, but it's a note evidencing that obligation in the agreement and it's secured by a mortgage.

Q. Could you look at that and tell me if this is the note we have been talking about that is discussed in that stockholder agreement?

A. Yes, it is.

Q. And can you tell me who signed that?

A. The note is executed by Robert 0. Lampl, Trustee for Sunland Properties Trust. That appears to be my signature. It is witnessed by Stanley E. Levine. The mortgage is executed between Virginia Mansions Apartments, Inc. and Elias J.

Hakim, Jr. and Janet R. Hakim. It appears to have been executed by Virginia [Page 65] Mansions Apartments, Inc. by Douglas A. Campbell, President, and attested to by Stanley E. Levine, Secretary. It does look like their signatures.

The acknowledgement is by Patricia F. Zoller, who is a person I know, employed by Campbell, Lampl & Levine at that time. I do not see a note from Virginia Mansions Apartments, Inc.

Q. I am handing you a certified copy of a pleading captioned GD No. 88-6561 filed in the Court of Common Pleas of Allegheny County, Elias J. Hakim, Jr. and Janet R. Hakim versus Virginia Mansions Apartments, Inc.

Have you ever seen that document before?

A. Yes. That first document you gave me was prepared and filed by Emerson Hess and Deborah Miskovich. They represented the Hakims, and it's not clear which one of them did.

The first one you showed me was filed after the process was started by them on behalf of the Hakims against me in Orphan's Court. This one was filed by Mr. Silvestri.

Q. Can you tell me whether or not there is a note attached to that Confession?

A. No, it's the same mortgage that is on the other one, and no note appears at all. [Page 66]

Q. Is there a guarantee attached to that?

A. No.

Q. Did Mr. Silvestri request you to file a voluntary petition on behalf of the debtor?

A. Yes.

Q. Did he state the purpose for that? Did he tell you why he wanted you to do that?

A. He was never elusive.

Q What was your response to his asking you to do that?

A. I told him I thought it was unwarranted and improper. I think I used the word stupid. It was all negative. I was clear about it on several occasions, and I know I wrote him at least one handwritten note to that effect.

MR. CHRISTMAN: That's all I have.

THE COURT: Mr. Christman, what was the first document that you showed Mr. Lampl?

MR. CHRISTMAN: Confession of Judgment complaint filed by the Hakims against Sunland Properties Trust and Robert O. Lampl, Trustee.

THE COURT: The first one is the Sunland Trust, and the second one is the Confession against the debtor corporation?

MR. CHRISTMAN : That's right.

[Page 67]

THE COURT: Are you offering those into evidence?

MR. CHRISTMAN: Yes, I am.

THE COURT: Is there any objection?

MR. SILVESTRI: No objection.

THE COURT: The first document which was attached to Exhibit No. 1 is admitted, Confession of Judgment against the Sunland Trust. Exhibit No. 2 is the Confession of Judgment and associated

documents against the debtor and it is admitted.

(Whereupon, Exhibits Nos. 1 and 2 were admitted into evidence.)

THE COURT: Mr. Federline, do you have any questions of this witness?

MR. FEDERLINE: Just very briefly, Your Honor.

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CROSS-EXAMINATION

BY MR. FEDERLINE:

Q. Mr. Lampl, when you were on the stand for the earlier hearing, you were shown a copy of the stock purchase agreement?

A. Yes.

Q. Do you still have a cony of that with you?

A. Yes. [Page 68]

Q. When you were asked to review that document by Mr. Silvestri, he directed your attention to paragraph 2.3 of that agreement. I would ask you again to please look at that paragraph.

A. (Witness-referring to document) Okay.

Q. And he indicated in there that this would indicate there was a guarantee by Virginia Mansions Apartments, Inc. for this obligation. Is that what he had indicated to you then?

A. A Well, I read that into the record, the last sentence. "Said note shall be executed by the buyer, (Sunland Properties Trust would be guaranteed by VMA)," that would be Virginia Mansions Apartments, Inc. "And such guarantee shall be secured by a mortgage on VMA's real property."

Q. Did Virginia Mansions Apartments, Inc. sign this agreement?

A. No.

Q. Did Virginia Mansions Apartments, Inc. to your knowledge ever sign any other agreement guaranteeing this obligation other than the mortgage?

A. None that I can recall.

MR. FEDERLINE: Thank you.

(Pause)

THE COURT: Mr. Bernstein, do you have [Page 69] any questions?

MR. BERNSTEIN: I do, Your Honor.

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CROSS-EXAMINATION

BY MR. BERNSTEIN:

Q. Mr. Lampl, would you take into your hand Exhibit 2, the Confession of Judgment against Virginia Mansions Apartments, Inc.

A. Yes.

Q. I was afraid that I possibly do not have a full and complete copy attached to Mr. Silvestri's pleading. Would you just take a moment as a practitioner of law and see if there is in fact a Confession of Judgment pro hac vice attached to that?

A. None appears.

Q. Would you also look at the mortgage document itself, sir, and I will address you to page 2 of that exhibit paragraphs 6 and 7. Is there anywhere in there an authority, a warrant of authority to confess any judgment?

A. Paragraph 7 says -- you mean of the body of the mortgage document?

Q. That's right.

A. "In the event of any default under the note, mortgagor hereby empowers any

attorney or any court of [Page 70] record within the United States of America or elsewhere to appear for mortgagor and for any and all parties claiming under or through the mortgagor in the Confession of Judgment or series of judgments against the mortgagor and any such party or parties in favor of mortgagee in an amicable action for ejectment of possession of the mortgage premises. And authorize the entry of such action with a Confession of Judgment therein for possession and for attorneys' fees not to exceed $250.

Mortgagee may bring such action before or after the institution of foreclosure proceedings upon this mortgage or after judgment thereon, or on said note, or after the sale of the premises by the sheriff."

Q. As a practitioner of law, Mr. Lampl, is this a Confession of Judgment, a complaint of Confession of Judgment for possession or ejectment, or is it in fact a complaint of Confession of Judgment for a money judgment?

A. It's for a money judgment. There is clearly no power of attorney or warrant of attorney to do that.

Q. Additionally, sir, in paragraph 7, didn't you read attorneys' fees of $250?

A. Yes, sir. [Page 71]

Q. And do you see $325,000?

A. Yes, sir. I can also tell you that no notices of default were ever given on any occasions preceding this.

MR. BERNSTEIN: Thank you, Mr. Lampl.

THE COURT: Mr. Silvestri?

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REDIRECT EXAMINATION

BY MR. SILVESTRI:

Q. Mr. Lampl, did you or your law firm draft the note attached to Exhibit 1?

A. I don't recall.

Q. Who would have drafted the note if you didn't?

MR. KELLY: Your Honor, I am going to object to that question as calling for a conclusion, and I don't think my client would be in any way capable of answering.

THE COURT: The objection is sustained. He said he didn't recall, Mr. Silvestri.

BY MR. SILVESTRI:

Q. Did you or your law firm draft the mortgage?

A. I don't recall that either.

Q. Will you look at the form of mortgage that was used and tell me if you recall whether your law firm was drafting mortgages like that in 1979? [Page 72]

A. In 1979 I was directly or indirectly doing no less than 30 to 50 mortgages per month of various types and forms for various clients for various types of transactions. I was actively supervising the operation of the title company, but I can't tell you if we used this form or not. I'm sure we used a lot of forms. This particular form does not look like the form we used.

You should also know that we had every piece of documentation in this whole process thoroughly examined, reviewed and approved by Robert Hackett, counsel for Equibank who we had paid substantial monies to. Nothing

concerning this property was done without his approval and for which he did receive considerable monies and consideration.

MS. FELDMAN: Your Honor, I would just move to strike the last portion of what Mr. Lampl was saying. It is clearly irrelevant to this proceeding. I have a feeling there is an ulterior motive on Mr. Lampl's part for reciting it. It is clear that Mr. Hackett I will state for the record represented Equibank.

THE COURT: To the extent that is irrelevant and non-responsive to the question, it is stricken. [Page 73]

MR. LAMPL: If I may explain. The only reason why I mentioned that is because this looks more like an Equibank form than our form.

THE COURT: I understand. You testified you don't recognize that to be one of your forms. If Mr. Silvestri has one contrary to the witness, I'm sure he will put him on, Mr. Lampl.

BY MR. SILVESTRI:

Q. In respect of that handwritten note that you were describing earlier that you sent to me, are you talking about Exhibit A to your motion -- I'm sorry. Exhibit A to your response to the Hakims' motion to dismiss?

A. (Witness referring to document) Yes, I sent that to you.

Q. In respect to this particular handwritten memo the first sentence says, "VMA, Inc. is not subject to an involuntary petition." What did you mean by that?

A. I meant that, one, I didn't think there were any assets to administer. Two, I didn't think you could conjure up any claims as a creditor. I felt that Virginia Mansions was dissolved and non-existent at the time.

I found out through this process and including some discussions we had with you that these [Page 74] things have been filed, but we didn't know that at the time. I felt there was no debtor, no claims, and that it didn't make sense.

Also, if you want me to elaborate on the things I told you before, we did not know who, if anyone, should be the responsible party or officer. You wanted to make Stan Levine or Doug Campbell part of the process, then you decided Gary Hakim might be better. I refuse to opine about it.

I told you I couldn't see who would pay for the proceedings, and who would prepare all the paperwork. I told you consistently since I referred Junior to you with this case they brought that there were problems. Junior Hakim had the records which no one was able to get.

For all those practical and legal reasons, I couldn't see any sense in bothering this court's jurisdiction. I felt and I have discussed this consistently throughout this process that it was merely some mechanism that you and/or Junior Hakim were bringing to vex me personally and put me in front of Junior, who is the real target for some of these lawsuits.

Q. If you believe that this bankruptcy is something that should not be imposed

upon the court, why [Page 75] did you just voluntarily convert the bankruptcy by the motion you made today?

A. For the reasons I stated. It is a practical way to, number one, clear up the air about these indemnifications through a third party who do not have the problems, meaning the trustee who doesn't have the problems with the process and getting mixed up with the litigation.

It would bring the thing to a head and get on with business instead of coming down here once a month preparing and spending two and three workdays and probably seven man days every month fooling around with some concoction of yours, and I felt we could get on with business this way.

The business should be resolved of disputes, pay the debts, and unwind

these matters to some satisfactory solution. I think that is a practical approach at this point in time.

Q. So what you are saying is that before today you opposed any bankruptcy for Virginia Mansions Apartments, Inc. in your capacity as a sole shareholder; is that correct?

A. I thought it was an improper use of this court's jurisdiction which I highly respect.

Q. And today you decided that it was proper to [Page 76] have a bankruptcy in this court; is that correct?

A. No, I felt exactly as I stated, if you would like to hear it again. I thought it was a practical solution for the loggerhead that we are at and to save the court's time in determining a lot of silly issues. It would enable us to

assert these indemnifications if the trustee deems it appropriate -- and I'm not speaking for the trustee. I think he should do it and make his own examination and then decide. He will have jurisdiction over those people, your clients. There will be no issue about that. They will come here.

In regards to the sanctions and the other matters, we could preserve that and handle that in due course. I also felt at this point in time it had become evident who has got what motives, and I do not feel that it would appear in any way I was playing with this court's jurisdiction when in fact I had suggested from the outset clearly to you, to Gary, to Junior when he suggested before that this is not proper. We are here so let's get on with it.

I think all those changes and circumstances give us a different perspective and gives me a different perspective about how the process should be used at this point forward.

I might add you were planning on my [Page 77] reputation as a bankruptcy lawyer and you wanted me to file this thing. I told you it was ridiculous, and you went on and did it yourself. I'm sure you prepared those schedules, and I'm sure you ghosted all the paperwork here. I told you that that's not the way to do things, and I don't do things that way. But nevertheless, you were playing a ventriloquist role orchestrating something here and I wasn't going to be part of it.

Q. Isn't it true you told me that you did not want me to file an involuntary proceeding against Virginia Mansions Apartments, Inc. because you didn't want to have to appear before certain members of this bench and have to account for your transactions?

A. That's not true at all. I will give this trustee access to any and everything in my file.

Q. One of the reasons why you say that no debt is due is because of second mortgages that were conveyed to Mr. Hakim; is that correct?

MR. CHRISTMAN: Your Honor, I would like him to clarify which action he is talking about.

THE COURT: Mr. Silvestri, would you repeat the question. I didn't hear the whole thing.

BY MR. SILVESTRI:

Q. I said one reason, Mr. Lampl, why you think that [Page 78] the obligation to the Hakims is paid is because of second mortgages; is that correct?

MS. FELDMAN: Again, we would seek clarification, Your Honor. What obligation? It's very unclear in that regard.

MR. SILVESTRI: The problem is when Mr. Lampl filed his petition to open or strike the judgment those are the words he used.

THE COURT: Mr. Lampl, do you know what Mr. Silvestri's question is?

MR. LAMPL: I know what he is inartfully trying to ask.

THE COURT: Can you answer the question then.

MR. LAMPL: He wants to know why I'm saying the debt isn't owed to the Hakims, and he is alluding to a set of conveyances to the Hakims regarding notes that were taken back by the trust. And then signing those was a consideration of payment on the debt. There are a lot of other things --

MR. SILVESTRI: Your Honor, I'm specifically referring to paragraph 10(b) which states, "The petitioner is also entitled to credit for the other items of value which the respondents received from the trust including but not limited to the following: [Page 79]

Item B, proceeds from second mortgages on units sold by the trust."

MR. KELLY: Your Honor, what complaint is he reading from?

(Pause)

MR. LAMPL: I know this is out of order, but I can give you a factual background.

Junior had his kids go to Emerson Hess in May of '86, I think it was, and they filed a petition. Problems developed between the Hakims and the condominium association. They were coming to a head, and Junior wanted me to perform certain acts and so on. Without getting into all that, I couldn't do what he wanted and I wasn't about to. He was distraught and we had a lot of incidents in our offices. It resulted in a petition to remove me as trustee in Orphan's Court.

Shortly after that the first complaint in Confession of Judgment was filed against the trust. A petition to open or strike was filed. Those two

matters were in front of Judge Zavarella. It's been on hold and there has been a lot of processes there.

Sometime after that when the condominium association was filing suit, I referred Junior to John. They knew each other in the past and John picked up his [Page 80] representation in that regards. Then about that time John filed a complaint in Confession of Judgment against Virginia Mansions Apartments, Inc.

I think what Mr. Silvestri is trying to get at is why do I dispute whether Sunland Properties Trust has the money. There is a lot of issues here and a lot of items.

THE COURT: Sunland Properties Trust is not a debtor before this court. Therefore, this is not a line of

questioning which I am going to allow in this hearing.

MR. CHRISTMAN: Your Honor, I believe it is relevant. If you don't agree with our argument that there is no debt owed from Virginia Mansions Apartments, Inc. to the debtor, there is another argument --

THE COURT: You mean to the Hakims.

MR. CHRISTMAN: To the Hakims, I'm sorry. If you say there is a debt owing from Virginia Mansions Apartments, Inc. to the Hakims, then there is this other question as to whether it is a bona fide dispute as to payment of that debt. It's the same debt, and it's under the same note that is owing from the trust to the Hakims.

THE COURT: Mr. Christman, how can I [Page 81] make any decisions about any of these issues until the state court decides whether this is a valid judgment.

MR. CHRISTMAN: That's right. There is a bona fide dispute. Mr. Lampl has filed a petition to open which says the claim was satisfied.

THE COURT: That's on the Sunland Properties Trust debt not on the debt against the debtor.

MR. CHRISTMAN: It's the same debt, Your Honor. If there is a debt, it's the same note. If the note was paid by one party, how can there be a debt to another.

THE COURT: The fact that this debtor that is before this court gave a mortgage against an asset, that it helped to guarantee someone else's note, does

not mean that this debtor owes the note. It simply means that its property may be seized as collateral to secure the payment. It does not mean --

MR. CHRISTMAN: That's right. Well, then you are buying my argument that that's not the issue. The issue is if you say I'm wrong and that somehow that mortgage does create a debt, then this is an issue.

THE COURT: I do not see how under the State of Pennsylvania law that the mortgage is a debt [Page 82] creating instrument.

MR. CHRISTMAN: That's my argument. It's still relevant to the extent that you haven't decided that there is no debt yet. To the extent that you make that decision, this is relevant.

THE COURT: I haven't decided that there is or isn't a debt yet because I don't know based upon the state court proceedings what might be out there. It's almost as though we are dealing with some type of interplanetary science in this case so far, and I do not know what's lying out there. It's a big morass at this moment with regard to this mortgage instrument.

I believe from the very inception of this case I asked for briefs on the subject of whether or not the mortgage was a debt creating instrument, and I am of this moment satisfied that it is not a debt creating instrument. It is in fact a lien against the property that his debtor may either have held or may even still hold. I don't know the status. Whether there is some other

basis on which this debtor owes the Hakims a debt, I don't know.

I do not find there to be a debt based on the sole evidence of a mortgage. Whether the guarantee creates a debt, I don't know. No one has mentioned a guarantee before me until today. So this [Page 83] is the first time I'm hearing about a guarantee. Whether that creates a debt, I don't know. That was not my understanding of the involuntary creditors basis for a petition. Their basis was based on a judgment. I don't see how they are entitled to a valid judgment based on a mortgage which is not accompanied by a note.

Mr. Silvestri has indicated that the mortgage incorporates the note. I haven't yet seen the mortgage. I don't

know whether that's true, number one. Number two, in any event it appears that that judgment is preferenced, which I'm sure the trustee now that it is a voluntary Chapter 7 will be taking some action to vacate inasmuch as it was entered only two weeks prior to the time that this bankruptcy was filed. Therefore, it seems to me there is no judgment which creates a debt in this case.

Whether there is a debt, however, on some other theory, I don't know. That's why we are here today to establish that premise. It has become irrelevant based on the conversion of this case to a voluntary Chapter 7 which is how we started this round of testimony, Mr. Christman. So where are we going now?

MR. CHRISTMAN: It's relevant because I want to see where the debt is. This involuntary thing [Page 84] was filed in bad faith without a debt and they knew there was no debt. Their response to our motion did not say there was a guarantee. It said the mortgage created the debt. We have seen no evidence regarding that. That's our position and where we are going.

THE COURT: All right. So far that seems to be in accord with the documents and the testimony except -- the mortgage may have been filed with one of the papers. As of the moment, I don't recall the mortgage, and therefore, I don't know whether it incorporates the note.

Could somebody point me to where the mortgage is located at in the papers?

MR. CHRISTMAN: The copy of the mortgage is attached to Movant's Exhibit 1 and the mortgage is attached to that Confession.

THE COURT: This is the document which was entered into evidence?

MR. CHRISTMAN: Yes.

(Pause)

THE COURT: Mr. Silvestri, where in the mortgage does it incorporate the note. Would you point me to the specific paragraph?

MR. SILVESTRI: I think it would be in the preamble. [Page 85]

MR. BERNSTEIN: The language, Your Honor, in the last paragraph

appeared in the first page of the mortgage is the only reference I see.

"Whereas Sunland has agreed to cause mortgagor to grant and convey unto mortgagee as security for the payment of the note.

"Now therefore, the mortgagor in consideration of said debt or principal sum of Sunland and as security for the payment of the same and interest as aforesaid together with all of the other sums payable thereunder or under the terms of the note, does grant and convey onto mortgagee, its successors and assignees--" Then there is a real estate description.

I see no reference at all to the incorporation of the note, Your Honor, except in subparagraph 6, "In case of default --"

MR. SILVESTRI: No, no. The preamble says, "Provided however that if mortgagor shall pay the mortgagee the 8 percent debt or principal sum including additional loans, advances and all other sums payable by mortgagor --"

MR. BERNSTEIN: Where are you reading, sir?

MR. SILVESTRI: It's in the preamble, page 2 I guess in the preamble. [Page 86]

THE COURT: At the end of paragraph 2. The paragraph clause starts out "Whereas Sunland has executed and delivered to mortgage a certain mortgage note." Then the last part says, "All of which are specifically incorporated herein by reference." However, that appears to relate to the necessity for payment and the interest rates. It does

not specifically incorporate liability on the note, Mr. Silvestri.

You don't have an officer of the debtor corporation signing the note.

MR. SILVESTRI: Your Honor, if we could go back to the questions that I asked about who drew the note and the mortgage, I'll have testimony that the mortgage and the note were drafted by Mr. Lampl's law firm.

It's a rule of construction that if there is any ambiguity in the instruments, they are to be construed against the scrivener of the instrument.

THE COURT: The problem is -- Mr. Silvestri, the issue is whether or not you have a contingent unliquidated or disputed claim as an involuntary petitioning creditor. This is clearly a disputed claim. The very basis for the

judgment which you obtained is in dispute, let alone whether or not [Page 87] you have a mortgage instrument.

MR. SILVESTRI. Your Honor, if we are going to jump from the issue as to the validity of the instrument to whether the debt is a disputed debt, then I need to go upon the inquiry of the second mortgages because the briefing that I have prepared in compliance with Your Honor's order indicates that simply by saying I dispute it. That does not constitute dispute. You have to have a legitimate bona fide dispute not a meaningless mouth thing that says, I contest.

Before Your Honor switched from the issues to the validity of the instrument to whether we have a disputed obligation, I would also point out to

Your Honor it's the third unnumbered paragraph on the second page that talks about the mortgagor being responsible for the payment of sums under the note. I would say that that particular paragraph together with the other paragraph that Your Honor was reading which incorporates the note constitutes proper authority.

I don't think there was a selective incorporation of the note. I think the whole note was incorporated. I think a note almost by definition is obligation.

THE COURT: How can, Mr. Silvestri, as [Page 88] a matter of law, how can the debtor -- well, I'd have to back up even one step further. We have a corporation which has 25,000 shares of stock issued and is all owned by the Hakims. The Hakims transferred that

stock to Sunland Trust. The Hakims apparently placed a value of six-and-a-half million dollars on that stock.

MR. SILVESTRI: No, they did not.

THE COURT: Well, someone did because that's the consideration in the note for the payment of the stock.

So the stock is transferred to the Sunland Trust in consideration of the six-and-a-half million dollars. The assets of the corporation are not transferred. In fact, the very creation instrument indicates that the property may well be transferred to another entity, not the Sunland Trust, not to Mr. Lampl as trustee. In fact, the corporation continues to maintain the ownership of the land which forms the

basis for the condominium complex which was later built.

The stock is transferred in exchange for six-and-a-half million dollars, the assets are not. Now the debtor corporation which now owns the assets and has sold its stock by virtue of a note is now guaranteeing performance of someone else's obligation. [Page 89] It has become a buyer and a sell essentially.

MR. SILVESTRI: Your Honor, that's why when you read the note and the mortgage together within the context of the maker of the note not having the asset, it only makes sense that the note is incorporated in the mortgage obligation to where the mortgagor promises to pay the note. The mortgagor promises to pay that note after

incorporating it by reference into the instrument itself.

Again, I would like to point out that the issue that we are looking at at this point in time is whether there was bad faith in the filing as distinguished from whether there is a proper creditor. Those are two different factual issues.

THE COURT: Well, they are not necessarily different -- they are different factual issues, but they may be resolved by the same factual finding.

MR. SILVESTRI: That is correct.

MR. BERNSTEIN: Your Honor, I do realize that I am among professionals and contemporaries in the court. But my reading that clearly, if anything, on the mortgage it would create an in rem

obligation and not an in personam obligation.

I also believe that under the statute [Page 90] of fraud to be answerable to the debt of another requires a clear unambiguous undertaking in signing.

THE COURT: I think that's a correct statement of the law in Pennsylvania, Mr. Bernstein, and that's the premise on which I have been operating. I read Mr. Silvestri's papers asserting to the contrary. I do not think that they state the correct position of the courts in Pennsylvania. I think the position you just stated does in fact state the correct position.

I do not believe the mortgage creates a debt. It is simply creating a line on property to secure a debt. In

this case that debt is owed by another and may be guaranteed by this debtor by some other instrument. As I indicated the first time the guarantee obligation came up was today. But I do not think it creates a debt instrument.

MR. BERNSTEIN: Your Honor, at this moment as trustee of Virginia Mansions Apartments, Incorporated, I would request on the record that Mr. Silvestri voluntarily strike the judgment which he caused to be entered by Confession in 1988 against Virginia Mansions Apartments, Incorporated.

THE COURT: Well, I can't force him to voluntarily strike it. I can ask him whether he is willing to do so. He may think he has a legal basis [Page 91] upon which not to strike it, Mr. Bernstein.

Mr. Silvestri, do you have a response?

MR. BERNSTEIN: I understand, Your Honor, but I just wanted it on the record so that he had an opportunity to mitigate whatever damages may have occurred.

THE COURT: Mr. Silvestri, do you wish to voluntarily strike the Confession of Judgment against the debtor corporation which was entered in state court in April of 1988?

MR. SILVESTRI: No. The Confession of Judgment is proper. It is based upon the note incorporated into the mortgage, which note the mortgagor undertook by its promise in the preamble reference to pay.

THE COURT: There is your answer, Mr. Bernstein. He won't voluntarily do it.

MR. CHRISTMAN: Your Honor, I would like to point out that the note isn't even attached to the Confession. It is brought in bad faith because the Confession language isn't even attached to the complaint --

MR. SILVESTRI: That is incorrect. If you read the allegations of the complaint in Confession of Judgment, you will find that the note is incorporated by reference under the Pennsylvania Rules of Civil Procedure which is already docketed by Mr. Hess.

[Page 92]

The complaint in Confession of Judgment with the note attached docketed as your Exhibit 1 in this case which is

incorporated by reference in the Confession of Judgment against the debtor, properly done under the note incorporated into the mortgage which obligation the debtor undertook to perform in the third preamble clause on the second page.

MR. BERNSTEIN: Your Honor, only because Mr. Silvestri is an old friend and entitled to fair warning. I would tell him that under the laws governing the Confession of Judgment in Pennsylvania the warrant of attorney must also be clear, unambiguous, cannot be precarious and must be on the page signed by the person against whose judgment is to be entered.

Now, clearly you were entitled to enter judgment for possession or ejectment and not for money damages. I

will give you until noon tomorrow to attempt to mitigate by voluntarily striking the judgment, giving you time to research the requirements of a warrant of authority for Confession of Judgment.

THE COURT: Gentlemen, where are we going on the testimony? I have lost sight of where we are. Mr. Christman?

MR. CHRISTMAN: Your Honor, the only other thin I have is to get into evidence a few dates. [Page 93]

MR. SILVESTRI: Your Honor, I think I was making inquiry on the second mortgages.

MR. CHRISTMAN: They are totally irrelevant. I thought we were not going to talk about bona fide disputes and the Sunland Properties Trust. This is totally irrelevant to the

debt of Virginia Mansions Apartments, Inc. to the Hakims.

THE COURT: Would you give me a proffer, Mr. Silvestri, so I know where you are going and I can make a ruling with regard to the relevance.

MR. SILVESTRI: Your Honor, I have certain closing sheets that are signed by Mr. Lampl that reference second mortgages, and I want to know if these are the second mortgages which he says should be credited to the note:

THE COURT: What is the purpose for that?

MR. SILVESTRI: To show that the allegation which Mr. Lampl made in the petition to open or strike the judgment confessed against the Sunland Trust was made in good faith, because he has asserted that in this proceeding as a

contest over the judgment confessed against the debtor in the state court for which he did not file a petition to open or strike the judgment.

THE COURT: Mr. Silvestri, I'm not [Page 94] allowing the line of questioning. The only issue that I have before me at this point is the damages which are sustained -- well, let me start again.

I have before me the issue of whether or not the involuntary petition is brought in good faith and incorporated into that is whether or not there was an undisputed bona fide debt of this debtor to the petitioning creditors.

I have found that there was no debt created by the mortgage. If you have some other proof of a debt, I will give you an opportunity to present that

testimony. I am finding as fact that this debtor does not have a debt to the Hakims based on the mortgage instrument.

With regard to the good faith issue, however, I will hear the remainder of the testimony. If you have any further questions of Mr. Lampl limited to the scope of the good faith issue or some other evidence of a debt, then you may proceed along those lines.

BY MR. SILVESTRI:

Q. Mr. Lampl, earlier in your testimony you said that you believe the stock purchase agreement was complied with by Virginia Mansions Apartments, Inc. making a guarantee. Did you mean to say that an [Page 95] instrument was actually tendered as a guarantee?

A. No.

Q. What did you mean?

A. I meant that there was compliance in terms of substantial compliance that fulfilled everybody's expectations as to fulfilling their obligations under that agreement. Whether we abandoned that notion or not or it became academic because were were dissolving the corporation, I can't specifically recall.

I just recall that we implemented the sale. The solution was at least effective and completed. I borrowed with the assistance of Mr. Hakim and his guarantee and his wife's guarantee millions of dollars from Equibank for the condominium conversion of an existing building.

We implemented the trust. We pass muster before the eyes of other counsel, tax planners, and got on with

what we thought was very sensible and a good project.

THE COURT: Mr. Silvestri, let me interrupt your questioning for a moment because I want to make a statement I made on the record clear so I don't mislead you.

I am making this finding that the debtor does not owe the Hakims a debt for purposes of the [Page 96] involuntary petition only. I am going to wait until some state court had determined the merits of the issues before it to decide whether or not there is a debt which may be owed to the Hakims for voluntary Chapter 7 purposes.

I am not finding it fact the Hakims may not be creditors in the voluntary case. I am finding that for purposes of filing the involuntary, there

was no debt within the context of the 300 section of the Bankruptcy Code which enabled them to be petitioning creditors. Is that clear?

MR. SILVESTRI: Yes. I understand you are limiting your ruling --

THE COURT: To the involuntary issue. Not to whether or not the Hakims in fact were the debtors for the voluntary Chapter 7 purposes after the matters are litigated by the state court.

MR. SILVESTRI: Well, Your Honor, if they are creditors for one purpose, they are creditors for all purposes.

THE COURT: No, they are not because the debts have to be non-contingent, liquidated and undisputed for involuntary purposes, Mr. Silvestri. And

everything I have heard here today leads me to conclude that at the very least there is a dispute and [Page 97] there is a bona fide basis for the dispute.

So for involuntary creditor purposes there is no debt. That is what I am determining. The petition was not founded within the confines of the 300 series of Title 11. However, for voluntary Chapter 7 purposes there is an actual litigation and decision by the court. It may be that they maybe determined them to be creditors. Because as of the date of the filing of the involuntary, I am finding that their debt was subject to a bona fide dispute, and that they were therefore not the proper creditors to bring an involuntary action.

MR. SILVESTRI: Your Honor, I appreciate the finding that you have just

made. In essence it tells me that any other evidence or testimony that I would have to offer on the lack of a bona fide dispute in respect to that debt would be a worthless thing to do.

I do have testimony that I would like to present. I have evidence that I would like to present to show that when Mr. Lampl says very ambiguously that this debt is not due because of a bunch of contingent, unliquidated indemnifications, which he has not been able to precisely state or state any specific dollar amounts, then I think I have been [Page 98] foreclosed of the opportunity to be heard on the issue of whether we have a real bona fide debt.

THE COURT: This court reporter needs a break. She has been at it for quite a long time. I will take this

under advisement in ten minutes, Mr. Silvestri, and I'll let you know my decision when we reconvene.

(Recess taken)

THE COURT: Let's reverse gears here.

Mr. Christman, you are making this motion based on the fact that the filing is in bad faith; is that correct?

MR. CHRISTMAN: That's correct.

THE COURT: Let's get on with how this filing constitutes bad faith and leave the issue of whether or not there is a debt or not.

Do you have anything to present on the issue of bad faith other than what has been presented?

MR. CHRISTMAN: Just a few dates to get into evidence.

THE COURT: First of all, Mr. Silvestri, I know I terminated your cross-examination of Mr. Lampl. You will have an opportunity to resume that after I hear on the bad faith issue for Mr. Christman.

MR. CHRISTMAN: Your Honor, I have a [Page 99] certified copy of a docket entrance of the Confession against Virginia Mansions Apartments, Inc. which shows that it was filed on April 18, 1988. I would like to mark this Plaintiff's Exhibit 3 and offer it into evidence.

THE COURT: Is there any objection?

MR. SILVESTRI: I have no objection. I would just like to state that the document also shows that that is the only thing that is filed, the entry

of the judgment by Confession. There are no petitions or any other actions.

THE COURT: All right. It is admitted.

(Whereupon, Plaintiff's Exhibit No. 3 was admitted into evidence.)

MR. CHRISTMAN: I also have certified copies of docket entries in the case No. GD 87-21412 in the Court of Common Pleas of Allegheny County which is the lawsuit filed Virginia Mansions Condominium Association versus Virginia Mansions Apartments, Inc. and others.

It also shows on the second page that on April 4, 1988 Judge Wettick issued an order permitting special services on Virginia Mansions Apartments, Inc. by mail.

THE COURT: Is there any objection to [Page 100] that document? What's the relevance, Mr. Christman?

MR. CHRISTMAN: I wanted to offer into evidence our complaint. The only relevance it will show is that we filed a lawsuit against them.

I wanted to show the dates and that that Confession of Judgment was filed two weeks after we got an order permitting us to get service on them.

This docket also shows that preliminary objections were filed by Mr. Silvestri on behalf of Virginia Mansions Apartments, Inc. in that action. Due to the original service that was stricken, we got the order permitting special service. It's relevant to show the time frame involved here to -- what I'm trying to show is that we got service on them,

and then Mr. Silvestri files a Confession to set up his bankruptcy which he then filed on April 29.

THE COURT: You are trying to show --

MR. SILVESTRI: I can probably stipulate to a lot of this.

THE COURT: Do you have an objections to the extent that Exhibit 4 establishes that Judge Wettick entered an order on April 29 service by mail? Do you have an objection to that condition?

MR. SILVESTRI: No, I don't.

THE COURT: All right. To that extent [Page 101] Exhibit 4 is admitted for that purpose.

(Whereupon, Plaintiff's Exhibit 4 was admitted into evidence.)

MR. SILVESTRI: When he gets into the other part about how I entered a

special appearance because his clients were claiming that service of process on Mrs. Janet Hakim constituted service of process on the corporation, the way he characterizes that I object to. What happened is they served process on Janet Hakim saying that she was an officer upon whom the process was served.

What I then did is entered a special appearance for Virginia Mansions Apartments, Inc. and filed preliminary objections attacking the service of process claiming she was not a proper officer. An affidavit was filed and Judge Wettick looked at it and said, hey, you don't serve Janet Hakim to get process on Virginia Mansions Apartments, Inc. After that I withdrew my appearance.

THE COURT: To the extent that the document establishes the date of Judge Wettick's order, it is admitted. For all other purposes it is stricken.

MR. CHRISTMAN: There is another date on there that maybe John can stipulate to, and that is the second amended complaint that was served on [Page 102] Virginia Mansions Apartments, Inc. on April 27, 1988.

MR. SILVESTRI: I guess that would be accurate.

THE COURT: All right. That stipulation is accepted.

MR. CHRISTMAN: And the other date which I would like to take judicial notice is that this voluntary petition was filed April 29.

THE COURT: Judicial notice is so taken. The court's file will in fact

indicate that as the date of the filing in this case.

MR. CHRISTMAN: The only argument that I have, Your Honor, there has been no evidence at all that there is any debt here, and I think that's bad faith per say. And because of the dates that are involved it was clear that this was just filed to stay that action and harass and delay us. I would request sanctions posed against the respondents and their attorney -- against petitioners and their attorney under Rule 9011, Section 303, and we be given leave to file an affidavit of our attorney's fees in representing this motion.

THE COURT: Does anyone wish to be heard on the issue of bad faith?

(Pause)

THE COURT: Does anyone have further evidence with regard to the issue of bad faith?

MR. KELLY: Your Honor, this is on Mr. Christman's petition for bad faith; is that correct?

THE COURT: Yes.

MR. KELLY: Not on our motion?

THE COURT: No.

MR. SILVESTRI: Is that inquiry directed to me also?

THE COURT: Yes. Do you have any testimony with regard solely to the issue of whether or not the petition was filed in bad faith?

MR. SILVESTRI: Certainly. I call Mr. Hakim to the witness stand.

THE COURT: Mr. Hakim.

- - -

ELIAS J. HAKIM, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SILVESTRI:

Q. Will you tell us your name.

A. Elias Hakim.

Q. In respect of this Virginia Mansions Apartments, Inc., a debtor in bankruptcy, what was your [Page 104] relationship prior to this stock purchase agreement we have been discussing today that was executed in 1979?

A. I owned 100 percent of the stock in Virginia Mansions Apartments.

MR. CHRISTMAN: Your Honor, can we have an offer of proof. He's just repeating what we have already heard.

THE COURT: Give me a proffer, Mr. Silvestri.

MR. SILVESTRI: Mr. Hakim will just introduce himself and his past relationship to the debtor. He will describe how he had been using Mr. Lampl and Mr. Lampl's law firm for legal services. He will describe how he had discussed with Mr. Lampl Mr. Lampl undertaking the duties of trustee for this trust.

He will give testimony as to how Mr. Lampl actually structured the documents and the paperwork. In respect to the structuring of the documents and paperwork, he was always led to believe in respect to the way the notes and mortgages were made that Virginia Mansions Apartments, Inc. was a guarantor.

This testimony is really not [Page 105] inconsistent with Mr. Lampl's testimony that said it was the intent and there was substantial compliance from Virginia Mansions Apartments, Inc. to guarantee as well as the stock agreement.

I am just going to put the question to him, why was the bankruptcy filed.

MR. CHRISTMAN: Your Honor, what he is talking about is what he thought. The issue here is what is the basis of the claim and what did he claim in his action. The petition says mortgage note, and that's what he claims the basis is.

So what he thought back in 1981 is irrelevant.

THE COURT: It is not irrelevant because his issue is

understanding the mortgage note. However, it is not inconsistent with any of the testimony which is in evidence here.

Does anyone have any reason to dispute that this would be Mr. Hakim's testimony with regard to the intent of the party? Is there some reason to have Mr. Hakim go through the exercise of so testifying to the facts that Mr. Lampl has essentially just stated?

(Pause)

THE COURT: Then Mr. Silvestri your representations with regard to his understanding will [Page 106] be accepted by this court as a fact up to the point where you are asking Mr. Hakim why the bankruptcy was filed and the basis for his claim of bankruptcy. From there forward you can present your testimony.

BY MR. SILVESTRI:

Q. Why was the bankruptcy filed?

A. Because there were certain amounts of money, escrows and so forth by Virginia Mansions Apartments. We were trying to get an accounting as to what was owed to the beneficiaries and Mrs. Hakim and myself.

Q. In respect to these escrows, what escrows are you talking about? Are those the ones we have already described in the closing with Equibank?

A. That's correct.

MR. CHRISTMAN: We have already discussed that. We have gone over that ten times. That's irrelevant, and I would request you tell Mr. Silvestri to stop that line of questioning.

THE COURT: It is not irrelevant if it is intended in good

faith and if he thinks the bankruptcy is somehow going to provide him with an accounting of escrow funds.

MR. CHRISTMAN: If he doesn't understand which action we are talking about, that's the only relevance it has. Because we have already established [Page 107] these escrow funds have to do with the debt of Sunland Properties Trust to the Hakims not the debt of Virginia Mansions Apartments, Inc. to the Hakims.

THE COURT: As I understand, the escrow funds, and someone can correct me, I thought they were escrows for taxes that may have been owed by the debtor corporation and therefore are properly debts of this debtor.

Mr. Lampl, am I in error in understanding the testimony?

MR. KELLY: The taxes were all paid, Your Honor.

MR. LAMPL: He is talking about the closings that occurred in 1979 that he participated in and bank counsel and their associates participated in. There have been accountings all over the place about this.

THE COURT: Mr. Lampl, the only thing I need to know is, did I misunderstand your testimony that there was in fact a point in time as escrow set up to pay taxes which escrow was not resolved until some time much more recently than the actual closing.

MR. LAMPL: I think the court misunderstood. That was an escrow for a then existing tax obligation. [Page 108]

THE COURT: In 1979.

MR. LAMPL: Right.

THE COURT: Which was resolved in 1985.

MR. LAMPL: They were all paid.

THE COURT: In 1979.

MR. LAMPL: Correct. Those monies were disbursed back then. There have been accountings back and forth, plenty of them. In fact, some of that is the matter before Judge Zavarella, Sunland Properties Trust. This is also the subject matter for which existing court orders specifically compelling Mr. Hakim's appearance, his daughter's appearance and five or six other people which have been defied and there have been motions for sanctions regarding that.

THE COURT: All right. I misunderstood.

Mr. Silvestri, what escrow are we talking about?

MR. SILVESTRI: An escrow that was established at the time of the 1979 closing under the stock purchase agreement.

THE COURT: For what purpose?

MR. SILVESTRI: For taxes and obligations.

THE COURT: So Mr. Hakim's testimony will be he filed this bankruptcy to get an accounting [Page 109] of that escrow.

MR. SILVESTRI: Yes, among other things.

THE COURT: The objection is overruled. Gentlemen, please be seated.

Proceed Mr. Silvestri.

BY MR. SILVESTRI:

Q. Now in respect to those second mortgages that we were discussing before, were you to receive proceeds from second mortgages to pay down the note?

A. That's correct.

Q. And in respect to some of those second mortgages, were you provided with mortgage statements -- I'm sorry. Were you provided with closing sheets for certain of the second mortgages that were established when there were various closings on units?

THE COURT: Now Mr. Silvestri, we are getting back into the same area that I have stricken before. I am not going to hear testimony with regard to a debt that is not owed by this debtor. I want to know about the good faith filing of this bankruptcy. Did Mr. Hakim

believe that he was owed a debt by this debtor. That's the issue.

MR. SILVESTRI. I'm sorry. I thought that was covered in the offer of proof. [Page 110]

THE COURT: Gentlemen, let's go off the record.

(Discussion held off the record)

THE COURT: In the off the record discussion the court indicated that it is inclined based on the testimony that has been put into evidence so far to rule as follows:

Number one, that there was no underlying obligation which created the debt which was not disputed at the time that the involuntary petition was filed. Therefore, the petition was not properly filed by the involuntary petitioning

creditors. However, there was no bad faith in the filing because the involuntary creditors did in fact have a judgment, whether valid or not will be determined by another body at another time or by this court at another time.

The court therefore indicated it is inclined to find as follows:

Number one, the involuntary petition should have been dismissed because there was no underlying debt. That is an irrelevant issue at this point because the case has been converted voluntarily to a Chapter 7; and number two, that there was no bad faith filing for purposes of Section 303 of the Bankruptcy Code. [Page 111]

I have not addressed any sanctions issues. I have not addressed any Rule 11 sanctions issues. We will do

those at an appropriate time in the future. When Mr. Lampl's motion is brought before the court, we will consolidate all those issues. That is what I am inclined to rule. Does anyone wish to argue either for or against either of those positions? Is there any testimony which is going to impact upon that decision?

Mr. Silvestri, do you have any testimony which is likely to change my mind about these issues that you wish to present?

MR. SILVESTRI: No, Your Honor.

THE COURT: Mr. Bernstein?

MR. BERNSTEIN: Absolutely none.

THE COURT: Mr. Federline?

MR. FEDERLINE: I do not, Your Honor.

THE COURT: Ms. Feldman?

MS. FELDMAN: Your Honor, the only point that we would make respectfully is that since it's clear on the record that there was no underlying obligation, it is a matter of law there was not a proper Section 303 petition as Your Honor has found. We believe that that establishes bad faith on the part of the petitioning creditors. [Page 112]

THE COURT: I understand your argument. I do not believe that's a correct statement of the law because of the fact that there was in fact a confessed judgment which could have formed the basis in a creditor who is not an attorney's mind that in fact there was a debt which was owed.

Therefore, I do not find that the underlying debt instrument whether

it's valid or not serves as the basis for a bad faith filing. My ruling, however, is for purposes of determining that the involuntary is not properly before the court. And that there was no underlying debt created by the mortgage. It appears to the court that the confessed judgment may have been a preference because of the timing by which it was entered in the court record and when this involuntary petition was filed.

So I find that for involuntary bankruptcy purposes there was not debt. I do not find that the fact that the confessed judgment was entered so soon before the bankruptcy is grounds on which to base a finding of bad faith.

MS. FELDMAN: As Your Honor has stated that does not foreclose us from seeking an amendment to file a proceeding

for damages under Rule 9011 against counsel. [Page 113]

THE COURT: It does not preclude the Section 9011 action. In fact Mr. Lampl has already filed one and if you file, it will be one consolidated hearing. I am limiting this, and I thought I made that clear at the outset to the Section 303 finding.

Mr. Christman, anything?

MR. CHRISTMAN: No.

THE COURT: Mr. Kelly?

MR. KELLY: No, Your Honor.

THE COURT: That is the ruling of this court.

Is there anything further that needs to be addressed before the sanction motions are scheduled for hearing?

(Pause)

THE COURT: All right. The case is converted to a voluntary Chapter 7 and Mrs. Bernstein is the trustee.

Mr. Bernstein, I would like you to file a report within 60 days of the status of what you have been able to determine.

MR. BERNSTEIN: Your Honor, I will try to untangle the web so I can do that.

THE COURT: At this point my concern is whether or not the corporate dissolution has [Page 114] proceeded with dispatch and whether that is any longer anything that this court needs to be concerned with based on the fact there is no longer an involuntary petition pending. I am most concerned with that.

I will wait to get your motions for relief from stay and your motions for

sanctions. I will attempt to schedule everything at one time so we only need to burden everybody with one more hearing along those lines. It will be scheduled as an evidentiary hearing so everyone understands and will be present with your witnesses.

Mr. Lampl, how much time will you need or Mr. Kelly, whoever is going to present testimony on your motions for sanctions?

MR. KELLY: Your Honor, we will probably need about two hours.

THE COURT: Mr. Christman and Ms. Feldman, I take is you are going to be filing a motion.

MS. FELDMAN: Yes, Your Honor. In fact, we have filed an amendment today which I guess could be considered that motion. We will be filing a brief in

addition to that, but the fact of the matter is we have had already before the court an amendment seeking Rule 9011 sanctions. I believe we [Page 115] would probably need under an hour, Your Honor.

THE COURT: The amendment that I received seeks sanctions under both 303 and 9011. I have ruled on the 303 issues. Your 9011 issue will be consolidated with Mr. Lampl's for hearing purposes.

Mr. Federline, do you propose anything?

MR. FEDERLINE: I would have to discuss with my clients whether or not we would be filing such a motion, but I would suspect that we would not require more than an hour or probably less.

MR. BERNSTEIN: Your Honor, may I make an oral motion to be supported by

a written motion to appoint myself and my law firm as attorney for the trustee?

THE COURT: Yes. Inasmuch as I'm not aware that there are any creditors other than potentially Equibank, does anyone have any objection to this motion?

MR. SILVESTRI: I don't think Equibank is a creditor.

THE COURT: Are all creditors represented in the court today?

MR. FEDERLINE: Allegheny County is not, Your Honor. Allegheny County would be a creditor as well. [Page 116]

THE COURT: Do any creditors present have any objection to Mr. Bernstein being counsel?

Mr. Bernstein, this motion will be granted. Please just attach your

certificate of disinterest. I am sure you have none or you would not have accepted the appointment of trustee in the case. I will schedule it for hearing. It will be granted.

MR. BERNSTEIN: Thank you, Your Honor.

THE COURT: Mr. Silvestri, how much time will you need to defend the motion which is currently filed? Have you received the amended motion asking for 9011?

MR. SILVESTRI: I have not received the amended motion. Also I have not received an order that schedules a date for answer to that. I do not know whether it would be necessary to answer not knowing what would happen today.

What I would like is an opportunity to first file an answer, and

then an opportunity to take discovery if I think discovery is appropriate.

THE COURT: All discovery in this matter will close within 30 days from today. All parties have legal access for discovery on the sanctions motions.

Mr. Silvestri, that includes the Hakims. [Page 117] If they are requested to appear for deposition purposes in eight of the sanction motions, they are to be produced for that purpose.

MR. SILVESTRI: Your Honor, I don't think 30 days will be sufficient for myself for the following reasons: I have been through conciliations in the state court and the first day of the state court trial is this coming Monday. I have a jury to pick on Wednesday. I

have another one to pick in about two week. Over the course of conducting two jury trials, I know it is going to consume all of March.

THE COURT: How much time would you need?

MR. SILVESTRI: If Your Honor could set 60 days, I know that I would have that time to work with.

THE COURT: I don't see that there is any urgency. I'm sure this case is going to go on for quite some time. So discovery will close in 60 days then.

MR. KELLY: Your Honor, if I may. At the time of the hearing it is my understanding that the court will compel the appearance of both Elias J. Hakim and his wife, Janet R.; is that correct?

THE COURT: No, what I have indicated is that they are to be produced

for deposition purposes without the necessity of requiring a subpoena. [Page 118]

For trial purposes, if you want them to protect yourself by subpoenaing them because they are not parties before this court for that purpose. They are for the sanctions motions.

MR. KELLY: For our sanctions motion. My understanding is that you were saying that they were to be present for our sanctions motion.

THE COURT: I'm sorry. I misunderstood, Mr. Kelly. I apologize.

Mr. Silvestri, is there any problem with having Janet and Elias Hakim present in court for the hearing on the sanctions motion whenever that will be scheduled, probably in about 90 days?

MR. SILVESTRI: I would like to confer with my client briefly.

MR. KELLY: Your Honor, I believe also we meant Gary Hakim who is the other party.

THE COURT: He is not represented, Mr. Kelly. So you are going to have to subpoena Mr. Gary Hakim.

MR. KELLY: My understanding is that they are to be available for discovery purposes in this period of discovery that we are now entering into; is that correct?

THE COURT: That's correct, but wait [Page 119] until I get an answer from Mr. Silvestri.

MR. BERNSTEIN: I see in the original notice for the meeting of creditors it established a bar date for claims of December 26, 1988. Since I did

file my trustee's reports of no distribution two months prior to that, I think that the bar date should be extended or reestablished.

THE COURT: Are you going to conduct another 341 meeting?

MR. BERNSTEIN: Your Honor, probably several of them but not under that type. I should do something in light of my discussion that I will want to meet with the various parties.

THE COURT: What do you suggest is an appropriate bar date?

MR. BERNSTEIN: I would simply ask for an order vacating the present bar date just as if it had been reported as a no asset case originally. So that the trustee if he does discover assets would then ask the court to establish a bar date.

THE COURT: That will be entered.

Mr. Silvestri, your response about having the Hakims present in court without the necessity of subpoenaes.

MR. SILVESTRI: I think that really [Page 120] should be deferred until Mrs. Hakim is deposed. If they really want to depose her, I can represent to the court that she joined the proceedings as a necessary party. It is Mr. Hakim who is interested in pursuing the claim.

THE COURT: Mr. Kelly, if you want to have Mrs. Hakim, then obtain a subpoena. If service is evaded and you need some extraordinary remedy, you may apply to the court for that kind of relief.

Mr. Silvestri, will you accept service of process on behalf of Mrs. Hakim or a subpoena to appear for this evidentiary hearing when it is scheduled?

MR. SILVESTRI: I am not authorized unless I talk to her.

THE COURT: In that case, Mr. Kelly, you got your normal service problems. As I indicated, if you intend to make service and service is evaded, then apply to the court for extraordinary relief and that relief will be considered.

MR. KELLY: Thank you, Your Honor.

THE COURT: I am going to allow a day for an evidentiary hearing on these motions based on the fact that it appears that the motions themselves may take a

morning and then the response may take an

[Page 121]

It appears on this timetable, however, that I will not be able to consolidate a motion for relief from stay with the motions for sanctions unless it is filed much in the future because under the time limit that motion would come up for argument much sooner than the motion to dismiss. That's all I can tell you.

Unless you file your motions Mr. Christman and Ms. Feldman at least 60 days from now, then it will be scheduled before these motions to dismiss are scheduled.

The argument on the motions to dismiss will be conducted in May. Does anyone have any scheduling conflicts that you are aware of now for a full day in May?

MR. SILVESTRI: There would be a date when the trial term would end in May, probably in late May.

(Pause)

THE COURT: May 30 will be the date in Room 1112 in the Federal Building. It will begin at 9:30 in the morning, and I will reserve all day for the hearing in this case.

Mr. Hakim, do you understand that you are to be back here for that hearing on May 30 if any [Page 122] of these parties request you to be here.

MR. HAKIM: I understand that, but it is difficult for me because I have a very busy schedule. I do not live in Pittsburgh.

THE COURT: Are you planning to be in Florida at that time?

MR. HAKIM: Yes.

THE COURT: Mr. Hakim, you will have to make some other arrangements, otherwise you will be in contempt of court.

MR. HAKIM: If I am supposed to be here, I will be here.

THE COURT: You will have to be here for this hearing, Mr. Hakim, because essentially what I am doing is continuing all the proceedings that were started today that I haven't ruled on yet including this amended motion to dismiss.

MR. HAKIM: I understand, Your Honor.

THE COURT: Anything further?

MR. SILVESTRI: Will Your Honor be entering written orders and docketing them for the decisions that have been made today?

THE COURT: Yes. Does anyone intend to appeal any of these orders? If so, then tell me so I can do an opinion for you if you are aware of that [Page 123] fact now.

MR. SILVESTRI: Your Honor, that's why I made the inquiry. I wanted to look at the order and think for a minute the effect of your findings because I am not 100 percent clear in respect to the finding that you made.

I think on the mortgage instrument and the note incorporation we are dealing with a matter of law. I did not brief that. What I was thinking of doing is trying to do some research before I have to go to state court on Wednesday and see what authority I can find. We are really not dealing with a factual dispute. What we are dealing

with is the construction and interpretation of instruments.

THE COURT: My ruling is based only on the involuntary, Mr. Silvestri. So I will give you written orders. If you choose to take an appeal of. if you will need an opinion after that, you can notice me.

MR. SILVESTRI: Your Honor's decision was based on disputed debts. I see no appeal decision based upon the impossibility of having an obligation under a situation with a note incorporation.

THE COURT: I will try to clarify along those lines to the best I can. My ruling is [Page 124] that there was no underlying debt created by the mortgage instrument. I am not making any finding as to whether the mortgage

incorporated the note. I am finding that the debt was undisputed to the extent there was an existing bona fide dispute concerning that note.

That did not therefore put that debt within the confines of the 300 series section of Title 11. So I did not allow the testimony to continue on that issue.

I will do an order on these factors.

MR. SILVESTRI: Thank you very much.

(Whereupon, the hearing concluded at 4:30 p.m.)

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C E R T I F I C A T E

I do hereby certify that the said statements were recorded to

typewriting under my direction, and constitutes a true record of the proceedings in the official transcript of proceedings.

/s/ Ruth Wendy Callahan
Ruth Wendy Callahan
Official Court Reporter
Bankruptcy Court

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:	)	
VIRGINIA MANSIONS	)	Bankruptcy No.
APARTMENTS, INC.,	)	88-1186
Debtor,	)	
	)	
ROBERT O LAMPL,	)	Motion No.
Movant,	)	89-1373-M
vs.	)	
ELIAS J. HAKIM, JR.	)	
and JANET R. HAKIM;	)	
and JOHN M. SILVESTRI,	)	
Respondents.	)	

MOTION FOR SANCTION AND REQUEST FOR REFERRAL TO JUSTICE DEPARTMENT

1. The Movant is Robert O Lampl (Lampl) both as an individual and Trustee of Sunland Properties Trust.

2. The Respondents are:

(a) Elias J. Hakim, Jr. and Janet R. Hakim (the Hakims), the Petitioning Creditors in the above case; and

(b) John M. Silvestri (Silvestri), Counsel for the Hakims.

3. The Movant believes and therefore avers that the filing of the Bankruptcy Case for Virginia Mansions Apartments, Inc. (the Debtor) was in bad faith as it was an attempt by the Respondents to accomplish the following:

(a) Delay the pursuit of Virginia Mansions Apartments, Inc. (VMA) by the Plaintiff in the ongoing litigation at GD 87-21412 Virginia Mansions Condominium Association vs. Virginia Mansions Apartments, Inc., et al.

(b) Obtain discovery on related matters through the filing of this Case, while refusing to cooperate with the discovery process in other litigation that involves similar parties;

(c) The harassment of Lampl by the Respondent's introduction of Lampl's

personal financial matters into this Case, although such matters are totally unrelated and irrelevant.

4. In mid-April 1988, in the presence of Michael R. Kelly, Leslie A. Lampl and Gary A. Hakim, Lampl was solicited by Silvestri to commence a Chapter 7 Case, as a principal of Virginia Mansions Apartments, Inc., the Debtor herein. Affidavits of Michael R. Kelly and Leslie A. Lampl are attached collectively as Exhibit A.

5. Lampl refused to commence such a proceeding for various reasons, among which was the fact that Lampl believed that Virginia Mansion Apartments, Inc. was legally out of existence and in any event, such a filing would be legally and factually inadequate and therefore in bad faith.

6. In light of Lampl's refusal, Silvestri chose instead to commence an involuntary petition against the Debtor, although Lampl repeatedly warned Silvestri of the ramifications of such a filing. A copy of a memo from Robert O Lampl dated April 25, 1988, to Silvestri is attached as Exhibit B.

7. The Movant believes and therefore avers that, prior to the commencement of this Case, the Respondents had full and complete knowledge of all debts and assets of the Debtor, as is more fully set forth below, although the Respondents cite that lack of knowledge as the reason for the filing of the bankruptcy in Paragraph 1 of Hakims' Motion to Dismiss.

8. Upon Lampl's purchase of the stock of Virginia Mansion Apartments,

Inc., as Trustee of Sunland Properties Trust, the Hakims indemnified Virginia Mansion Apartments, Inc. and Lampl from all claims against it including any and all demands, claims, actions or causes of action, assessment, losses or damages. A copy of the Stock Purchase Agreement is attached as Exhibit C.

9. Further, the Hakims warranted to Lampl that the Debtor had not outstanding debts, but those of record, at the time of the stock transfer. (See Exhibit C)

10. The Movant believes and therefore avers that the Hakims cannot be a Petitioning Creditor against any entity where that entity is indemnified by the Hakims for any claim against it.

11. The Movant further believes and therefore avers that both the Hakims and Silvestri knew of these indemnifications

and warranties prior to the bankruptcy, but chose to conveniently ignore the same.

12. The Movant further believes and therefore avers that Silvestri and the Hakims have "flipped back and forth" in their positions regarding the Debtor in an attempt to manipulate both the Courts and the related litigation within them as is evidenced by the following:

(a) On or about April 1, 1988, Silvestri filed Preliminary Objections on behalf of Virginia Mansion Apartments, Inc. at GD 87-21412 in the Court of Common Pleas of Allegheny County, Pennsylvania, a copy of which is attached as Exhibit D. This filing was supposedly done at the request of Janet R. Hakim;

(b) On or about April 7, 1988, an Order of Court was entered allowing

Silvestri to withdraw his appearance on behalf of Virginia Mansion Apartments, Inc. at GD 87-21412, a copy of which is attached as Exhibit E.

(c) On or about April 9, 1988, Silvestri, on behalf of the Hakims, filed a Complaint in Confession of Judgment against Virginia Mansion Apartments, Inc. at GD 88-6561, a copy of which is attached as Exhibit F.

(d) On or about April 29, 1988, Silvestri, on behalf of the Hakims, commenced this Case against Virginia Mansion Apartments, Inc., the Debtor, which Silvestri used in the Case at GD 87-21412 to effectuate a stay of proceedings in that Action against the Debtor. A copy of a letter dated April 29, 1988, from Silvestri to Robert N. Hackett is attached as Exhibit G.

13. Further, the Respondents have attempted to involve Lampl both personally and as Trustee of Sunland Properties Trust in the Bankruptcy Case by consistently filing malicious and scurrilous pleadings regarding Lampl that are totally irrelevant and unrelated in any manner to this proceeding, but are merely an attempt to manipulate and harass Lampl.

14. The Movant believes and therefore avers that, in accordance with Bankruptcy Code, 11 USCA 303(i) and Bankruptcy Rule 11 USC 9011 appropriate sanctions should be imposed upon the Respondents because of the following:

(a) there has been a willful violation of the Bankruptcy Code and Rules in this Case as the Respondents had knowledge of the Hakims indemnifications

and warranties regarding the Debtor prior to the filing;

(b) the Respondents' conduct in the commencement of this case has caused unnecessary cost of litigation to the Movant as well as other parties;

(c) Silvestri is an experienced and competent bankruptcy attorney who should have realized the ramifications of such a filing notwithstanding that he ignored warnings to that end;

(d) the violation in this matter is extreme as not only was the Petition filed in bad faith, but the Respondents perpetuated their actions by following up with pleadings that contained totally irrelevant and unrelated matters which were only used in an attempt to harass and manipulate Lampl.

15. Further, the Movant believes and therefore avers that this matter should be referred for investigation to the U.S. Justice Department as the actions of the Respondents constitute a crime under 18 USC Section 152.

WHEREFORE, the Movant requests this Honorable Court to impose sanctions against the Respondents in a form and amount chosen by this Court and to refer this matter to the U.S. Justice Department for investigation.

/s/ Michael R. Kelly
MICHAEL R. KELLY
The Renshaw Building
Ninth St. and Liberty Ave.
Pittsburgh, PA 15222
(412) 392-0330

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF PENNSYLVANIA

In Re:	)	Bankruptcy No.
	)	88-1186
VIRGINIA MANSIONS	)	
APARTMENTS, INC.,	)	Motion No.
Debtor.	)	88-5359-M

AMENDMENT TO MOTION TO
DISMISS CHAPTER 7 PETITION

The VIRGINIA MANSIONS CONDOMINIUM ASSOCIATION, in order to clarify the basis for its claims, and as a result of information contained in the pleading of this action, files the following Amendment to its Motion to Dismiss Chapter 7 Petition, which Amendment adds a new paragraph numbered 27:

27. The ASSOCIATION believes and therefore avers that, in accordance with Bankruptcy Code 11 USCS 303(i) and Bankruptcy Rule 11 USC 9011, appropriate Sanctions should be imposed upon the HAKIMS and their attorney of record, and

the ASSOCIATION awarded the costs of this litigation because of the following:

(a) There has been a willful violation of the Bankruptcy Code and Rules in this case as set forth in this Motion; and

(b) The conduct of the HAKIMS and their attorney has caused unnecessary cost of litigation to the ASSOCIATION as well as other parties.

WHEREFORE, the ASSOCIATION requests this Honorable Court to Order the HAKIMS and their attorney to pay the ASSOCIATION'S costs of this litigation.

ROBERT N. HACKETT & ASSOCIATES

By: /s/ Mark J. Christman
Mark J. Christman, Esquire
Attorneys for the Virginia Mansions Condominium Association

UNITED STATES BANKRUPTCY COURT
DISTRICT OF WESTERN PENNSYLVANIA

IN RE:	: CASE NO. 88-01186
VIRGINIA MANSIONS	: 1502 Federal Building 1000 Liberty Avenue : Pittsburgh, Pennsylvania 15222 : August 8, 1993 9:00 a.m.

S E A L E D T R A N S C R I P T

TRANSCRIPT OF IN CAMERA HEARING
REGARDING THE DETERMINATION OF FINES
PURSUANT TO OPINION AND ORDER AND
SUPPLEMENT JUDGMENT ORDER BEFORE
HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY JUDGE

A P P E A R A N C E S:
For Mr. Silvestri:
Swensen, Perer & Johnson
By: J. ALAN JOHNSON, ESQUIRE
2710 Two Oliver Plaza
Pittsburgh, Pennsylvania 15222

Audio Operator:
Janet Kozlowski

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

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INDEX

WITNESSES

John Silvestri

DIRECT	CROSS	REDIRECT	RECROSS	FURTHER REDIRECT
16				

EXHIBITS:	MARKED	RECEIVED
Sanction Hearing Exhibit Number 1	12	
Sanction Hearing Exhibit Number 2	13	

[Page 3]

(THE FOLLOWING TRANSCRIPT
IS A SEALED HEARING)

THE COURT: Be seated, please. Good morning.

COUNSEL: Good morning, Your Honor.

THE COURT: This is the matter of Virginia Mansions Apartments, Inc., Bankruptcy No. 88-1186, and this is the time scheduled for an in camera hearing concerning the propriety of the imposition of sanctions. Had a -- after a trial that was conducted in a related matter which generated this order this morning. Would you enter your appearance, please?

MR. JOHNSON: I am appearing on behalf of John M. Silvestri, Your Honor, at Bankruptcy Number 88-01186 (JKF) for

the limited purpose of the in camera hearing concerning determination of a monetary sanction. I would respectfully suggest that we be able to conduct this hearing in camera and that it be a matter of record which I will request at this time and later request be sealed.

THE COURT: All right. Both of those motions are granted, Mr. Johnson. There is no one else present. I would propose that since we are set up to do this here, if it's agreeable to you, we do. However, if anybody else should come into the courtroom, we'll terminate the proceedings and move to chambers.

MR. JOHNSON: That's fine, Your Honor.

THE COURT: All right.

MR. JOHNSON: I think that's the best way to do it. [Page 4]

THE COURT: All right. This record will be sealed at the conclusion of the hearing.

MR. JOHNSON: Initially, let me say that we are aware that Mr. Hakim, through counsel, did not choose to come before Your Honor for hearing, and that he submitted various financial statements upon which you based the decision about what the monetary sanction would be, and that you concluded it would be $15,000.

We have, on the other hand, chosen to appear before you this morning, because we think there are certain issues that you could -- you should consider as we take the steps through this process, and certain case law that you should

consider before you decide to impose any monetary sanction.

For the record, I think Your Honor is -- well, I'm sure Your Honor is much more aware of the facts of this case than I am, or could ever be. But there's already a sanction imposed in this case in the amount of approximately $80,000 for counsel fees and expenses, which is a judgment that is -- been entered against my client, Mr. Silvestri.

THE COURT: And which if his present motion to have that judgment marked satisfied is satisfied, will not in any way impact on Mr. Silvestri.

MR. JOHNSON: Well, but there are other factors that could, and I think the record will so reflect as we go along. Obviously, Rule 9011 of the Bankruptcy

Rule states, and I think [Page 5] this language is important, because I want the Court to understand that now, at this point, I'm making a record because it's important that I do that. But I am going to digress, kick back, so to speak, when I do propose what I think would be an equitable approach to this particular case, but -- and I'm paraphrasing, Your Honor. The Court shall impose an appropriate sanction, which may include an order to pay other parties' reasonable expenses, including reasonable attorney's fees. The language of the Rule, I suggest, is singular, "appropriate sanction." The award of attorney's fees, I submit, at this point, and the expenses that were associated with those counsel fees, is the sanction. This would be an

additional sanction that I don't think is contemplated by the rule.

The Court's December 22nd order referred to fines of two occasions, and ironically, I noticed that the scheduling order outside also referred to this hearing as a hearing to determine was fines would be.

THE COURT: Yes, I think my order initially said something like that, and I tried --

MR. JOHNSON: Yes, and it was changed March 9th. There's no question about that.

THE COURT: -- to -- yes, I tried to correct that.

MR. JOHNSON: We're not taking issue with that. But whether it said fines, or whether it said that it was a monetary sanction, it's our position at this point

that it would be [Page 6] punitive, and under the Dorian case, and the cite on that is 857 F.2d, 191 (3rd Cir. 1988) concerning Rule 11 sanctions with regard to -- I have a copy of that which you can have, but I made some comments on it. If you want to disregard, or I can strike them out, I'd be glad to give it to you, because the case is very helpful, I think, to test here this morning in deciding how to approach what Your Honor has to do.

But notwithstanding the footnote in the March 9th, 1993 order changing the language to monetary sanction, I respectfully suggest that any separate monetary sanction would nevertheless be punitive under the facts and circumstances of this case in light of that $80,000 award, because it is already

having its effect on Mr. Silvestri and his family at this point where everybody is trying to remortgage, even myself, and it wasn't my idea, of course, but it was my wife's idea. I didn't realize how much money people were saving. He could do that, too, but nobody is going to remortgage his home because there's an $80,000 judgment on it. That's just one of the incidental things.

But I said, the Dorian decision is very instructive, I think. And it states that the primary purpose of a sanction is to deter abuses of the legal system. I think Mr. Silvestri has appeared before Your Honor prior to this particular case, subsequent to this case, and before other members of this Court, the Bankruptcy Court -- and I think in those other

proceedings, [Page 7] that his conduct was professional.

I think this particular controversy that brought about what we're here about today is a matter that is no longer before this member of the Court, or the Bankruptcy Court. It's not a matter that he's going to come back here on. It's across the street now. There is no opportunity for him to do anything with regard to this case which needs to be heavily sanctioned in Bankruptcy Court. From --

THE COURT: You mean the case is concluded? The Virginia Mansions case is virtually concluded through the bankruptcy process?

MR. JOHNSON: I understand that any appeals are over before Judge Block now relating to any of the matters. The

bankruptcy is still continuing. There's no question about that.

THE COURT: Well, I'm not exactly sure of the procedural posture in front of Judge Block, Mr. Johnson, but -- in fact, I'm sure Mr. Silvestri can straighten this out --

MR. JOHNSON: Yeah, he can --

THE COURT: -- but I think there is a -- there is pending either a motion to quash that appeal, or something, which Judge Block has deferred until I finish this sanctions hearing.

MR. JOHNSON: I understand. Can you enlighten us on that, John? [Page 8]

MR. SILVESTRI: Yes, Your Honor. After the appeals were filed from the dollar judgments that were entered, a motion to -- I think quash -- was filed in the District Court saying that those

dollar judgments that were entered were interlocutory orders and not appealable, because in the same order that awarded those judgments there was also the provision in the order that provided for this proceeding today. So -- and I think the other thing that was mentioned in the motion before Judge Block is that those appeals that had been taken could go forward if a motion were presented to this court, and I have to think for a minute, under Rule 8002(b).

THE COURT: To authorize an appeal of an interlocutory order.

MR. SILVESTRI: Yes. Yes.

THE COURT: Well, who filed those -- I don't even know who filed what in the District Court. Who filed the motion to quash?

MR. SILVESTRI: Mr. Lampl.

THE COURT: Okay. So, it's your appeal that's pending before - it's an appeal by you as a -- well, there was no order with respect to the -- I guess I'm confused as to the parties, Mr. Silvestri. I just ought to ask the question directly. Who are the appellants?

MR. SILVESTRI: I am.

THE COURT: On the -- on what? [Page 9]

MR. SILVESTRI: The money judgments that have already been entered.

THE COURT: That were entered against you --

MR. SILVESTRI: Yes.

THE COURT: -- on the attorney fees and the 1928 order?

MR. SILVESTRI: Correct.

MR. JOHNSON: Concerning the issue of joint and several liability, I think. Is that correct?

THE COURT: Okay.

MR. JOHNSON: Okay.

THE COURT: So, that is the issue that Judge Block has apparently deferred until I conclude the sanctions hearing?

MR. SILVESTRI: Apparently. I can't read Judge Block's mind. But --

THE COURT: Well, neither can I, but I'm -- I mean I'm assuming that that's what's happening. That motion to quash hasn't been decided, has it?

MR. SILVESTRI: No, it hasn't.

THE COURT: Okay. All right. I understand your procedural issue, Mr. Johnson. I think I still have jurisdiction to enter this order. My --

MR. JOHNSON: Oh, I'm not saying -- no, I'm not saying, Your Honor, that you don't have jurisdiction in the event -- I don't want you to misunderstand me to say that. What I'm [Page 10] saying is, and I think as I go forward here and cite various holdings in the Dorian case that it becomes clear that if the frivolous action filed is for that particular proceeding, is not capable of being revisited so to speak. It's a factor that the Court should consider when determining what the monetary sanction should be.

THE COURT: Oh, I'm sorry. I thought you were talking about a jurisdictional issue.

MR. JOHNSON: Absolutely not.

THE COURT: All right.

MR. JOHNSON: There is no questions, and I'm not raising the issue of jurisdiction at all.

THE COURT: That's fine. I understand those factors --

MR. JOHNSON: What I am saying is, this case as far as you're concerned, is over. Mr. Silvestri is not going to be back here to cause or to be involved in any dialog with regard to the case other than what's happening here today.

THE COURT: Okay. I don't know that the case has been closed, or that the trustee has filed the necessary papers to get it closed. The docket would reflect that, but I think you're correct that everything substantive -- at least that I'm aware of in the case -- is concluded.

MR. JOHNSON: That's my understanding.

THE COURT: Okay. [Page 11]

MR. JOHNSON: And the basic principle governing the choice of sanctions under this circumstance is that the lease severe sanction adequate to serve the purpose, should be imposed. If the Court does, and it has the option certainly to decide on a monetary sanction, the Dorian case said the Court must be careful not to impose monetary sanctions so great that they are punitive. Ability to pay is a significant factor in judging what a particular sanction should be.

But it's interesting to note that the Court -- and the decision is very -- well, let's put it this way, it leaves vary little for the District Court to consider as far as what they should do in remand, because the Court said we're

going to do a couple things here. First, we're going to say ability to pay is a factor when we determine what monetary sanction should be, because there was some confusion in the law in the Third Circuit of whether or not that was the law.

Secondly, we are telling this particular court in Dorian, to consider certain mitigating factors. Now, basically what Dorian had to do with, was a lawyer who filed a civil rights action without a factual basis. The Judge sanctioned that lawyer. An appeal was taken, and that's what brought about some of the -- that's what brought about the particular holdings, but they went on to say that in addition to considering ability to pay, in determining what a sanction should be, the Court should also

look to any adverse publicity to the [Page 12] particular individual who was sanctioned, and toward that end, I would like for the Court for the record to reflect -- and I'll just mark this, with the Court's permission, Sanction Hearing Exhibit Number 1, a Wednesday, December 30th, 1992, article in the Tribune Review, actions of developer, lawyer, in bankruptcy case, in plain, Judge, as evidence of the adverse publicity that Mr. Silvestri has suffered.

THE COURT: Thanks. Well, who place this article in the paper?

MR. JOHNSON: I don't know. I guess somebody -- some reporter wrote it. I don't see a byline, or reporter's name.

THE COURT: How did - the report -- it says by Richard Gazarik, G-a-z-a-r-i-k, but how Dr. Mr. Gazarik

find out that any order had been ordered in the case?

MR. JOHNSON: I don't know that, but certainly from my experience in public life, litigants sometimes have reasons to call the media when certain things happen.

THE COURT: Indeed. As does Mr. Silvestri potentially.

MR. JOHNSON: But I don't see any benefit to Mr. Silvestri to call the media on anything like this.

THE COURT: I don't see any benefit to anybody. I don't see any benefit to anybody with respect to this type of order. This is not the only publication of this page.

MR. JOHNSON: I'm not pointing fingers, but I'm saying [Page 13] certain litigants certainly may have had an interest in calling the media. I'm not pointing fingers, but I think obviously, it wasn't Mr. Silvestri.

THE COURT: Well, I'm not so sure that's obvious, Mr. Johnson. It that's necessary, and that is a point that has to be testified to. Let's put Mr. Silvestri under oath and ask that question.

MR. JOHNSON: We can do that.

THE COURT: Because, yes, adverse publicity, I think is something that should be considered, Mr. Johnson, but if, in fact, the person who caused the adverse publicity is also the person who is subject to it. I'm not so sure that's a valid factor.

MR. JOHNSON: The reporter told my client who told him, and we will put that on the record.

THE COURT: All right.

MR. JOHNSON: The other factor, and in addition to that, I -- I would like to have Your Honor look at a July 11th, 1992 letter to Mr. Silvestri from a client --

THE COURT: July 11 --

MR. JOHNSON: I'm sorry. January 11, 1992, from a client who was concerned about whether or not he could and should continue to represent him in the light of that publicity.

THE COURT: This obviously should be dated '93? [Page 14]

MR. JOHNSON: Yes.

THE COURT: Sanction Exhibit -- Hearing Exhibit 2?

MR. JOHNSON: Yes.

THE COURT: Okay.

MR. JOHNSON: The order itself, which is a public order, also referred the case to the Department of Justice and the Disciplinary Board. I think those are matters that because it was a public record, and I'm not questioning the fact that the Court did it. Don't get me wrong. But the fact that people in the legal community would know that could certainly raise an inference that there was something criminal involved, or at least someone suspected there was.

THE COURT: I don't think the opinion in any way suggests --

MR. JOHNSON: Oh, no, I'm not saying that, Judge. I'm saying it would be normal. We all know how the system works, that certain things are brought to the attention of the United States

Attorney out of an abundance of caution, perhaps, or to the United States Trustee. Okay? The order did refer this case to the Department of Justice, and to the Disciplinary Board, and I'm not criticizing that referral. I am saying that because the referral was made, that is something that should also be considered because it has the tendency to be certainly adverse.

THE COURT: I had a motion pending that I granted. It [Page 15] was Mr. Lampl's motion that I was ruling on, and I granted Mr. Lampl's motion with respect to the referral.

MR. JOHNSON: Okay. But my point is this: This is a factor that should also be considered.

THE COURT: That's fine.

MR. JOHNSON? Okay? Okay.

THE COURT: I will also consider that factor and the reference to the Disciplinary Board. In fact, has any action taken place with respect to either?

MR. JOHNSON: Not to my knowledge. do you know of any action?

MR. SILVESTRI: No.

MR. JOHNSON: I, in representing Mr. Silvestri, have may inquiries, obviously, at the United States Attorney's Office to determine, try to determine whether there is a criminal investigation. I have been unsuccessful in finding anybody that's aware of one. Okay. That --

THE COURT: I'm not aware of one, Mr. Johnson.

MR. JOHNSON: No, because that could obviously impact on his testimony here,

or my decision to let him testify today, and I'm aware -- I'm not aware of that.

THE COURT: All right.

MR. JOHNSON: The Court went on to say that evidence tending to establish that the lawyer has already been deterred sufficiently from filing frivolous action is also very import- [Page 16] ant for the sanctioning court to take into consideration.

Now, with regard initially to the financials, I would like at this point to put Mr. Silvestri on the stand, and have him review the financials with Your Honor --

THE COURT: All right.

MR. JOHNSON: -- specifically the bills, so you that you can have a picture for that.

THE COURT: All right.

MR. JOHNSON: John, would you be sworn and take the stand?

JOHN SILVESTRI, WITNESS, SWORN

DIRECT EXAMINATION

BY MR. JOHNSON:

Q Would you state your name, please?

A John Silvestri.

(The next portion of the Examination of John Silvestri is UNDER SEAL, and has not been herewith been transcribed. The transcript continues after the sealed portion as follows.)

Q Could you elaborate, if you would, for us, on the effect on you and your practice when the publicity concerning this matter occurred?

A The article that I didn't think to photocopy for you this morning, which has had the real impact is the article that appeared in the Pennsylvania Law Journal.

See, that article in the Westmoreland County paper and that client that wrote me a [Page 17] letter questioning whether I'd be able to represent him was in the public domain.

Q Right.

A And I did have, you know, on the public domain, I did have another client telephone me who I was working on several matters on, and he was concerned about the article in the paper with respect to one of the matters I was working on for him. But this Pennsylvania Legal Journal article is something that really stings a professional walking around on the street. You see, I'm a sole practitioner, and one thing that I do is I walk on Grant Street, Ross Street, Forth Avenue, Third Avenue, Forbes Street, is -- I see people who know me.

Some people like me, some people don't like me, and those that do like me tell me what other people say about me. And probably one of the things that has hurt me the most is when someone who likes me, was making the comment about how another lawyer, a lawyer who's very well respected in the legal community was making a comment during a negotiation with my lawyer friend saying, "Jesus, that Silvestri, that article in the Pennsylvania Legal Journal, he's walking disbarment.

THE COURT: Mr. Silvestri, what is the Pennsylvania Legal Journal? I'm sorry. I just - I'm not familiar with the publication.

Q Explain to the Judge what that is.

A The Pennsylvania Legal Journal is a weekly magazine that is [Page 18] distributed to subscribers -- I would say that 90 percent of the subscribers or more have to be lawyers.

Q You say it's weekly?

A I think it's weekly.

Q Or monthly?

A I think it's weekly.

Q Okay. I thought it was monthly, but go ahead.

THE COURT: All right. So, there was an article --

THE WITNESS: On the front page.

THE COURT: By -- about -- about this case?

THE WITNESS: Yes. About this case.

THE COURT: All right.

THE WITNESS: When I received the call from Rich Gazarik, that reminded me

about the inquiry the Court made about the source of that article in the Tribune Review. When Rich Gazarik called me before the article was printed, but I didn't get to return the call until after it was printed. He learned of the subject matter of this because a photocopy of the Court's opinion was faxed to him by Mr. Lampl's office.

I guess what really makes the Pennsylvania Legal Journal article hurt is that I am a sole practitioner and most of the business I get are referrals from other lawyers. Over the years of my early practice, I developed a reputation and I started to find it very curious when lawyers who were my opponents referred cases to me. Of course, after

whatever [Page 19] litigation was involved with me on one side and the lawyer on the other side. But that's the one that -- it hits me in an academic intellectual professional way and I think it's hitting the bread box, too.

Q Thank you.

MR. JOHNSON: May he stand down? I'm going to call him again at the conclusion of my statement.

THE COURT: Yes. You're excused, Mr. Silvestri.

MR. JOHNSON: I think the record, Your Honor, with regard to the financials and the other matters is complete now. I want to change gears for a little bit if I could. I want to say this. You and I -- you've haven't been practicing quite as long as I have, but certainly almost -- realize throughout the practice

of law, this ability in the law is probably one of the most important qualities a lawyer can have. With the increasing size of the bar, the ever present demands of clients, it is important as indeed imperative I think that lawyers get along. Now, as you're aware, I was a public lawyer for many years, and I think I took for granted the great relationship that existed between the United States attorney's office and the defense bar in this town. I didn't appreciate it until I became a civil practitioner also, because I didn't see quite the same relationship. But fortunately, when we go back as a defense attorney in the U.S. Attorney's office, things were done on people's word. People were treated civilly. Lawyers

respected each [Page 20] other's word. That's important. It is the essence of not only the successful practice of law in my opinion, but the proper practice of law.

I reviewed a number of documents in this case, obviously, in preparation for this hearing today and to get some flavor. One of them that I reviewed was a motion to recuse you. Had I been advising John Silvestri at the time he was preparing that motion, my advice to him would have been do not file that motion. Not because it would make you mad, because if a lawyer thinks a Judge should recuse, maybe a lawyer has a duty to go forward. But I didn't see a basis for it from what I read.

THE COURT: There was no basis for it, but that doesn't mean that Mr.

Silvestri didn't have the right to file it if he felt there was.

MR. JOHNSON: In reading the transcript of the hearing, I think that's clearly what was conveyed by you. But had I been advising John, I would have told him, don't file this. The more I read about the case from the documents, the more I realize and respectfully suggest to you that John Silvestri became very wrapped up in a case and in the personalities. He went beyond legal advocacy.

I have done that a couple of times in my career. I don't know if you have, or not. I've learned from it. I wasn't happy, and later I was ashamed and I didn't serve my client [Page 21] well, ultimately. But I learned.

You know, in may ways, I think, Judge, the easiest thing to do here would be to say take the sanction and walk away. But in the final analysis when we look at it in those terms, what purpose does it really serve. Does it really benefit the bench? Does it benefit the bar, does it benefit John? Who does it really hurt? It hurts the people that rely on him financially. It hurts his family. I think there's an opportunity here that rarely presents itself, and one the Court could consider, and I wish would consider in resolving this matter.

John Silvestri, and I did not know John before he walked into my office. I had heard of John before he walked into my office, but I didn't know him. I found him to be knowledgeable, intelligent, and certainly a hard working

attorney. I think in many ways, this experience is and should be a turning point in his career as a lawyer because it is a critical point. And I would like to see it be more of a positive turning point than a negative turning point. And what I'm going to ask this Court to do -- to consider -- is to take the opportunity to do something different. Primarily, because he is a lawyer.

THE COURT: Before you get to that, Mr. Johnson, let me ask something because I don't want to loose this train of thought. You made the point earlier, and I agree, that one of [Page 22] the factors that I should consider is whether the opportunity for the type of conduct which I have found to be sanctionable will present itself again.

Now, you in that analysis have restricted your viewpoint, I think, to whether or not that kind of conduct could arise again in this case. And frankly, in the best of all possible worlds, I hope that it cannot arise again in this case, and I hope that it will not arise again in any other case, but Mr. Lampl, as you may know, is also a practitioner before this Court. What happens if in some future case which could happen, Mr. Silvestri and Mr. Lampl are once again at loggerheads? My concern is not so much with this specific case, because the egregious conduct in this case, I hope, is over, but I in no way ever, under any circumstances, want to have to go through that type of egregious conduct with those two attorneys in one case again. What is the appropriate sanction or method by

which I make sure that that doesn't happen?

MR. JOHNSON: That's a good question. Let me do this if I can.

You're going to testify again, John, as you know. While I make the rest of my statements here, I want you to be thinking about how you're going to resolve it, because I think the Judge wants to know that, and I think it's important.

These are some of the things I'd suggest, Your Honor, [Page 23] for your consideration. Number one is that Mr. Silvestri be required to attend a course in basics in bankruptcy. There is a PLI course scheduled for November 8th and 9th in New York City that we had on circular on. In addition to that, to enroll in a course, and this course would be over and

above the five hours that we're all required to take in ethics for the CLE in Pennsylvania on bankruptcy ethics -- ethics in Bankruptcy Court -- I don't know if that's something that's necessarily offered --

THE COURT: It is.

MR. JOHNSON: -- with any frequency here. If it is, that is something that I think he could be ordered to attend. And in addition to those two things, to allow him to devote 50 hours of pro bono work to assist the Chapter 13 trustee with the overwhelming caseload they have, and/or the U.S. Trustee and those cases where panel attorneys frankly don't want to be involved because there may not be a fee and try to shy away from, or any other thing that the Chapter 13 or U.S. Trustee may -- may need done that they could

oversee John and use some of his abilities and devotion to hard work to help the system. That's not something that a person who is not a lawyer can do. It is something that person who is a lawyer certainly can do and I think it's an alternative here for Your Honor to consider.

THE COURT: I don't know in a Chapter 13 context, Mr. [Page 24] Johnson. I don't do any 13s currently, and so, I'm not aware whether there is large pro se debtor practice in the Chapter 13s. I tend to think that that is not the rule. Most of --

MR. JOHNSON: My understanding was that -- excuse me, Your Honor. I'm sorry.

THE COURT: I thought that most of the pro se cases that were filed were

Chapter 7s. But I could be in error. As I said, I don't do Chapter 13 work. But to the extent that what you're suggesting would be that there's an ability to essentially be supervised through the process, I'm not aware that it would work in a Chapter 13 context. I could be in error, but I'd have to explore that with Mr. Gartner as a Chapter 13 trustee.

MR. JOHNSON: I have not contacted either Mr. Goldring or the Chapter 13 Trustee prior to this hearing, because these are things that I wanted you to consider. And if you would, my request would be that you would hold in abeyance the imposition of any additional monetary sanctions, that we have a date certain when these things would have to be completed, and John would have to do these things satisfactorily. At this

point, I would like to have Mr. Silvestri retake the witness stand for some additional questions, and bring questions Your Honor might have of him.

THE COURT: You're still under oath, Mr. Silvestri. You don't need to be re-sworn. You're still under oath. [Page 25]

MR. SILVESTRI: Okay.

CONTINUED DIRECT EXAMINATION

BY MR. JOHNSON:

Q This is the time, John, for you to relay to the Court what this experience has meant to you, whether it's taught you anything. If it hasn't, it hasn't; if it has, I think the Court should know about it. Whether it's been a critical point for you in your career, and if it has, what you're going to do about it. Those are the things that are important for the

record, and I think certainly things that Judge Fitzgerald is interested in knowing about. Since this happened, could you tell us what's happened to you as a lawyer, if anything?

A Well, I think I probably started to address that when I made the previous comments concerning the Pennsylvania Legal Journal, and that phrase "walking disbarment" is something that I can't get out of my head, that the person who said that would come to think of me like that.

Over and beyond that type of personal thing, there is something else involved, and I think probably the best way to focus on it is to take a slice of life out of the case and perhaps focus on that recusal motion with the 20/20 hindsight that I now have.

After the Court made its decision, I scurried around as lawyers do filing appeals and the like given the short time frames for getting those things done. And then what I did is [Page 26] I started showing the Court's opinion and papers that I had filed to others. For a sole practitioner, that is something that requires an extra effort because I can't walk across the hallway to another lawyer and say, "What do you think of this?" And the context of picking up the telephone and trying to have a phone call with another lawyer really doesn't convey the message. What's needed is to sit down with someone else, and one of the persons that I sat down with has many more years of experience practicing law than me, and after having read through the recusal, and I think -- I can't

remember what the paper was called -- a withdrawal of the reference to the District Court -- this person with a lot more experience that I have told me that if I were that judge, I would be annoyed, I would be angry, and I would write the opinion that was written of you and from what is in the papers the motion for recusal should not have been filed.

So, what I did at that point in time is I decided that the judgment that I personally exercised without consulting with another lawyer in filing that motion for recusal, and for that matter and following it with the filing in the District Court, was not good judgment, and just taking it on the face of what this person told me, I called up Hakim and I said I've made a decision to withdraw the appeal on recusal. I'm

going to file it, and you tell me in 24 hours whether you joint the motion. And that's what was done. [Page 27]

But at that point in time, I did it not because it was my personal judgment, because it was someone else's judgment, and what I started thinking of was the process that I went through in exercising my personal judgment at the time that I did that. And the judgment that I made in comparing the papers in the District Court. And I can now come to the same conclusion that a recusal should not have been filed. Now, because of this other person's advice to me -- I'm trying to think of the right words -- putting that person's self into the shoes of the judge who would have been the object of the recusal.

I think that it's only right, and I think it's only proper for me to express my regret, and to say to the Court personally that I'm sorry.

THE COURT: Mr. Silvestri, if you think you have grounds to file a motion to recuse, regardless of on what basis, if it were well-grounded in fact, or warranted by law, I think you've got every right, and in fact, probably a duty to file that -- to file a motion. And I don't expect an apology for filing something if you believe it that it was well-grounded in fact.

What -- when I say -- let me start this sentence over. What was somewhat dismayed is the fact that you somehow thought because of information that I put on this record that Mr. Lampl and I were classmates in law school, that somehow I

had what has been referred to somewhere along this line is an intimate [Page 28] relationship with him, was somewhat dismayed. I don't know Robert Lampl any better than I know you. In fact, probably less well than I know you, because you, at least, I have seen to say hello to at Pittsburgh Public Theaters in the past. To the best of my recollection, I've never even seen Robert Lampl at a social event. Now, I'm not trying to say that I have attended those events with you, as you know, I have not. I have likewise never attended a social event with Mr. Lampl, and I guess what disturbs me is I don't know on what basis you though there were some facts of record to file the motion. In terms of being angry or upset, I'm not. I'm upset with the fact that this case was

commenced in the manner in which it was commenced as an involuntary bankruptcy without any legal ground. That's what I find disturbing. The motion to recuse is a motion to recuse. I'm not offended by it, I'm not upset by it, and I'm not disturbed by it. It's over with. And to the extent that you feel any apology necessary is accepted.

MR. SILVESTRI: Well, I appreciate that because this is probably the best context within which to make the apology. I also understand what you said when you said that if you feel that there are grounds the motion should be made, and I would advise the Court that I have previously made that motion before, and after it had been denied, had a discussion with the Judge, and the Judge kind of reflected on the motion, and

thought that I had made some good points in the motion. So, I [Page 29] do appreciate that there are circumstances when it is proper and, in fact, there's a duty to do that.

THE COURT: I think there are. This was not one of them, Mr. Silvestri, and I don't want this record to be any reflection of the fact that I think that was the properly founded motion. I do not think so. But it's over. It's done with and it's in the past.

MR. SILVESTRI: Mr. Johnson asked me about resolving future conduct. The first thing that comes to my mind in answering that particular question is Mr. Hakim is an exception to this in the sense that he was referred to me to deal with the substantive problems that underlined this bankruptcy case and

various other cases. But the first thing that comes to my mind is the rules of professional responsibility for one of the clients that I have that might come into a litigation against a client of Mr. Lampl's. And I guess the easy thing to say would be whenever Mr. Lampl is the opposition, I should resign from the case.

THE COURT: I don't necessarily know that that's true. You may have an obligation not to, and hard fought fights are what litigation to a certain degree is all about. But they're -- Rule 11 in the Sanctions process, Mr. Silvestri, I think is not whether -- about whether you win or lose. It's about how you play the game. And my concern is how are you going to play that game if you and Mr.

Lampl are opponents in any other bank-[Page 30] ruptcy case.

MR. SILVESTRI: Your Honor, one thing that I think is different from this particular proceeding that other proceedings in general is that in this particular proceeding, Mr. Lampl was not merely an attorney. He was a party.

THE COURT: In the sanctions proceeding?

MR. SILVESTRI: No, I'm not talking about the sanctions proceeding. Well, he was in the sanctions proceedings. He was a party movant. But I'm talking about an underlying litigation.

THE COURT: As the trustee of the Sunland Properties Trust?

MR. SILVESTRI: Yes.

THE COURT: Okay. I mean, okay doesn't mean I agree or disagree with

your statement. Just that I understand what you're saying.

MR. SILVESTRI: And what I'm attempting to communicate is that there is a big emotional difference when one is a party to the proceeding, and when one is -- I'm going to us the word "merely," merely an attorney. When one is a party to a proceeding, the judgment of the Court directly affects that person. It might affect that person financially. It usually does because - well, I shouldn't say that because I'm a civil practitioner, not a criminal practitioner, but the judgment of the Court in the Civil arena is 90 percent money and maybe 10 [Page 31] percent even less injunction. And because of the stakes that a party has in litigation, I think what it does is it heightens

emotionality (sic), and in fact, when the Rule 11 action was brought by Mr. Lampl as a party against John Silvestri as party, John Silvestri at that time -- 20/20 hindsight is great -- but John Silvestri at that time didn't appreciate what happens to someone who is merely a lawyer when that person becomes a party, and that all of a sudden the judgment of the Court take on a whole completely different meaning.

Now, having said that, I would think that the next time chance would deal out a case where Mr. Lampl had a client involved in it, and I had a client involved in it, we don't have the situation that we have here where Mr. Lampl has a personal stake in the outcome, and John Silvestri has a personal stake in the outcome.

THE COURT: Mr. Silvestri, I'm sorry, but I don't see how Mr. Lampl had any personal stake in this outcome. If anything, he was the trustee of a Sunland Properties Trust, which wasn't an entity in bankruptcy, and he may have in that capacity had some stake in the State Court proceedings with which I'm really only vaguely familiar. But I do not see how he had any stake, any personal stake, in this involuntary bankruptcy. So, to the extent that your analysis is based on that, perhaps you better enlighten me.

MR. SILVESTRI: Your Honor, I don't think there's a [Page 32] need for you to dwell upon whether Mr. Lampl did or did not have a personal stake.

THE COURT: All right. I understood what you were about to say to be based on the fact that --

MR. SILVESTRI: But I did have a personal stake when the motions were made against me and perhaps I should have had my own lawyer as a party.

THE COURT: Well, I suppose to that extent, he also had a personal stake when the cross motions for sanctions were filed by you.

MR. SILVESTRI: That's something that I had forgotten. A lot has gone on in that case.

THE COURT: However, that does not make him a party to the underlying bankruptcy any more than it made you a party to the underlying bankruptcy. Yes, the Rule 11 transactions back and forth did impose a personal stake but Rule 11 by its nature imposes that risk on an attorney who practices before any litigating Federal entity at this point

in time. So, I don't think it's the nature of the proceeding, or the motion itself. It's the rule. If you're going to practice in the Federal Court, Rule 11 Bankruptcy Rule 9011 is there. It's a risk.

MR. SILVESTRI: Well, needless to say, I share the same concern that Your Honor spoke of earlier which is perhaps you have a duty to represent your client, John, and maybe you shouldn't automatically resign every time Mr. Lampl is the op- [Page 33] posing attorney.

THE COURT: That's right. I am concerned about that, and as a result based on the fact that over your past life and Mr. Lampl's past life, I'm sure this hasn't been the only case in which the two of you represented parties in a bankruptcy proceeding. I would think

it's likely that it may happen again in the future. You're very young lawyers, you have a long career ahead of you, you both do bankruptcy work, and I think the circumstances are likely to develop. And what I'm concerned with is, how are you going to control your end of the conduct to be sure that this kind of a proceeding doesn't happen again. This proceeding, in my opinion, went beyond the bounds of all propriety from the outset, and my concern in trying to figure out an appropriate sanction, is to deter that type of conduct in the future. I want some sanction that makes you think about this conduct so that in the future it doesn't happen again. That' part of my concern in this case.

MR. SILVESTRI: Well, what I'm about to say, I have to say very carefully, and

the reason why I have to say it very carefully is because of the attorney/client privilege. Even though I have terminated my representation of Mr. Hakim, the attorney/client privilege continues, and when I began representing Mr. Hakim, things were told to me from third party sources as to Mr. Hakim's reputation in the community and his business in the community. And practicing law, I'm learning, [Page 34] is a little bit more than reading books, developing legal theory. It involves judgment and every attorney doesn't have to take every case that's presented.

There was another matter involving Mr. Hakim that was part of the operative facts underlying the bankruptcy case. Your Honor is familiar with the motion that was filed to disallow claims of the

taxing bodies. While the litigation over that, although it ended in the Bankruptcy Court, well on bankruptcy issues, continued in the State Court, and -- excuse me -- as you Honor is aware from my earlier testimony and may have been aware when the motion to disqualify the tax claims was before the Court is I am a public lawyer working for the Board of Property Assessment Appeals and Review, and although what we dealt with here in the Bankruptcy Court on that motion to disqualify claims -- or I'm sorry -- disallow claims. I'm using the wrong word. And what I was dealing with, with my appearance entered in various matters in the State Court were liens of taxes, dollars amounts of liability and one thing that I had thought I was carefully doing was staying away from conflict of

interest, for my client, the Board of Property Assessment Appeals and Review of Allegheny County, Pennsylvania. And there were some proceedings. I think to describe them really isn't productive, but what it did is it prompted me to enter an area of representation for the client where I knew there would be a conflict of interest. [Page 35]

See, when I first entered into the representation of Mr. Hakim on what I call these related matters, it only started out defending him as a co-defendant of Mr. Lampl in a State Court Class Action. And what had happened was, is things developed. The representation was a never-ending broadening of different topics, broadened into this proceeding. But another thing it had broadened into was me corresponding to

the Allegheny County Board of Property Assessment Appeals and Review and saying, "I'm requesting your permission, client, to represent Mr. Hakim in a matter that involves an assessment case, which is ancillary to three cases dealing with judicial liens, and is ancillary to the class action case. May I have your permission to represent this client?" And I discussed it with my client legal counsel. They don't call me a solicitor, they call me an assistant legal counsel. And chief legal counsel felt that there was nothing inappropriate, although he didn't like establishing that as a practice. I took it before the full board of the Board of Property Assessment Appeals and Review and upon disclosure, discussion with their chief legal counsel, they entered a vote that

permitted me to enter an appearance in this tax assessment case for a property owner limited to certain issues. And that spawned a complaint to the State Ethics Commission. I have a letter here dated December 11th, 1992, and that spawned a complaint to the disciplinary board. I have a letter here dated January 7, 1993. [Page 36]

THE COURT: Why who?

MR. SILVESTRI: Who made the complaints?

THE COURT: Yes. Who complained?

MR. SILVESTRI: I don't know. I asked the State Ethics Commission who complained, and I was told that that is kept a secret unless you want to pursue good cause. And I asked the disciplinary board who made the complaint and they

said that is kept a secret regardless of what --

And how does this relate to future conduct with Mr. Lampl. Maybe the problem that Your Honor is observing really isn't a problem between Mr. Lampl and me directly. I think one of the things that Your Honor had a chance to observe since your judgment order was Mr. Lampl and I appearing to argue the motion to satisfy judgment. I played the tape recording for Mr. Johnson. And on this very issue that you're interested in future conduct, I would request that the Court -- and I have a copy of the tape I can provide to the Court to listen to Mr. Lampl -- being Mr. Silvestri argue.

THE COURT: Well, I will relisten to the tape. I'm sure I have a copy of the original take that I can pull, Mr.

Silvestri. I don't need your copy to do it.

MR. SILVESTRI: Well, I don't know what type of a process you have to go through to get it. I know I can have it --

THE COURT: I have to ask for it.

[Page 37]

MR. SILVESTRI: Okay. If you have to ask for it and then wait and what have you, I can just get it to you --

THE COURT: No, I'm sure it's available. If I can't find it, I'll call you.

MR. SILVESTRI: Okay.

MR. JOHNSON: Emphasize that you'd like to emphasize so that she can concentrate on that when she's listening to the tape, if you would, sir.

MR. SILVESTRI: What I would like the Court to listen to is the words spoken by Mr. Silvestri that have to do with any characterization of Mr. Lampl. I'm not asking you to really listen to what Mr. Lampl said. I'm just asking you to focus on Silvestri. What did Silvestri say.

THE COURT: Well, I haven't listened to that tape recently, but my recollection is that you didn't say much, if anything at all, concerning Mr. Lampl. The focus on the argument was on the underlying legal issue about which I request a brief, which I'm in the process of reviewing as I recall. But I'll relisten to the case.

MR. SILVESTRI: Well, I would respectfully submit to the court that the

Court's memory of what Silvestri said in that proceeding is accurate. I would ask the Court to listen to the tape with what Silvestri didn't say when perhaps some comments were made that were unflattering to Silvestri. There were some comments made that I think could be interpreted as [Page 38] unflattering Silvestri.

MR. JOHNSON: By whom, sir?

MR. SILVESTRI: My recollection is that I was described as a person who needs mental help. I can't remember the exact works, but I do remember hearing the words, and when I heard those words, what I did was restrain myself from saying any words in reply to those words.

THE COURT: All right. We're having a hearing under seal. We're fine. Thank you.

All right. Mr. Silvestri. You restrained yourself from replying.

MR. SILVESTRI: From making a reply.

THE COURT: All right.

MR. SILVESTRI: I think probably what I didn't say and didn't do is probably more important that what I did say. In the context of what happens the next time.

MR. JOHNSON: And those statements were statements that were made by Mr. Lampl during the argument?

MR. SILVESTRI: Yes.

MR. JOHNSON: Okay.

MR. SILVESTRI: I have -- in respect of what I was talking about with the disciplinary board in the State Ethics Commission, part of judgment is figuring out what type of a case you're going to accept. I mean, Your Honor and I have

already discussed duty after the relation exists, but there [Page 39] ain't no duty if you know to stay away from certain types of cases, or certain types of characters. And I think what I'm really saying is that perhaps what I should have done was subpoena Mr. Kelly here. Hindsight is always 20/20. But one thing that I had always attempted to do was not get personally involved. It doesn't always work out after the fact what your intent it, and the reason why I mention Mr. Kelly's name is because we had more than a number of conversations than I can recall on late Friday afternoons after Judge Wetig's motions court about trying to figure out a way to settle all of the controversies between Hakim and Lampl. And these are conversations that were initiated by Silvestri saying, "Hey,

Kelly, can't we talk about this? Isn't there a way to jiggle this around? Junior and Bobby have gotten back to when Bobby graduated from law school in 1974. And I don't want to do in this particular proceeding is cast dispersions on anyone. I don't mean anyone. I mean Mr. Lampl, but -- and Mr. Johnson will jump on me if a misspeak, but when there's a relationship between two people, whether it's husband and wife, law partner and law partner, business person, business person, there's always that give and take, opposing counsel, opposing counsel. How are you going to treat one another. And I think one thing that I can say, Your Honor, is that although my in-the-courtroom behavior has been found to be inappropriate, including papers that have been filed, and I'll include that

[Page 40] under what I describe as the in-the-courtroom behavior, I have never take anything home with me to dish out. And what I have learned to do is turn the cheek. I live three blocks from an ice cream cone shop store. Because of what has gone on in this case, the summer before last, a Saturday afternoon I had spent the morning and early afternoon working in my office. I had gotten myself one of those frozen yogurts --

(Interruption by Judge to quiet courtroom noise)

THE COURT: All right. I'm sorry, Mr. Silvestri. Are you ready to continue?

MR. SILVESTRI: Okay.

THE COURT: Okay.

MR. SILVESTRI: I got a frozen yogurt and I had crossed the street and a

personality involved in this case -- it wasn't Mr. Lampl himself. I would say that the person is a blood relative of Mr. Lampl, walked across the street and I was spat upon in my face. And what I chose to do was continue to walk with the person making derogatory remarks. I think that it's important for me to turn the other cheeks when any lawyer, and perhaps be more sensitive when Mr. Lampl happens to be a lawyer in the case, when something that's irrelevant to life, or irrelevant to the courtroom happens. I received mail and hand deliveries from Mr. Lampl, and what I chose to do was to turn my cheek, not to respond to it. I don't know if the Court is interested in looking at some things that I received, but I [Page 41] brought them.

THE COURT: Mr. Silvestri, this is your hearing. I will look at whatever you think is appropriate for me to look at. I don't know that it is relevant or necessarily with respect to the issue of monetary sanctions. It may be relative with respect to future conduct.

MR. SILVESTRI: Your Honor, I only mention this because you say you have an interest in making sure that I don't exhibit poor conduct in the future in another case with Mr. Lampl. And what I am telling Your Honor is that when I received from Mr. Lampl this note and this shirt and this poster, I didn't even tell my client about it.

Q Could you tell us what they depict briefly in one short sentence each?

A The poster and the shirt is the Joker, and I'm compared to Jack Nicholson

playing the Joker. This is another note I received from Mr. Lampl and when I received this, I did not even tell my client about it.

Q What does the note say?

A Here is another referral from me to you. It fits your stable. And then attached is a photocopy of a page from the Pittsburgh Legal Journal with someone looking for a lawyer.

Q What's the significance of it, or what was the significance to you, it having been sent by Mr. Lampl?

A Mr. Lampl referred Mr. Hakim to me.

[Page 42]

Q Okay. After receiving any of these things that you just described, what, if anything, did you do, or did you respond at all?

A I didn't respond to it.

Q Okay. And why didn't you?

A To me it was clearly outside of the bounds of the litigation, and it had not place personally, or of any relevance to the litigation.

Q Is there something else you wanted to bring to the Court's attention before I ask you some questions along another line?

A I guess there's just one more little one. It's a joke in the newspaper about me being a jackass.

Q Now, is there anything else you'd like add concerning that, Mr. Silvestri?

A No, and quite frankly, I really don't like doing this. It's obvious that I brought it with me to court and that it was over there with the notion that it wouldn't be used, but I'm not interested in making war. When I was going to

college -- actually, I think this was when I was in high school. There was an expression, make love, not war. I'm not interested in making war. But when the question is posed to me, what will you do, Mr. Silvestri, the response that I have for the Court is that I try, and I have no control over who's a good enough psychiatrist, psychologist at the armchair to figure our how to pull my chain. Those things did not pull my chain, because I [Page 43] didn't respond to them.

THE COURT: Those notes -- the only one I noted the date from was in November of 1989. Are the rest of them at that same time period?

MR. SILVESTRI: About the same time period. There were things that I did not save. I threw things out.

Q There was some concern about whether or not, and maybe you can address this, or whatever your personal knowledge might be, with regard to the Chapter 13 Trustee, whether they're overwhelmed over there with cases. Could you share with the Court if you have any first-hand knowledge of what your knowledge is concerning their --

A. I'm stuck, just like the Court is stuck, because I don't practice Chapter 13s just like the Court. Apparently, I didn't realize that until now this Court does not deal with Chapter 13s. So, both of us, we don't know. I can't shed any more light.

Q Are you aware of with regard to the U.S. Trustee's Office, the concept of panel attorneys and how on certain occasions there may be cases where a

panel attorney could be appointed, but may not as it turns out, be compensated for his or her time on a case.

A I've been told by more than one trustee that being on the panel involves a lot of freebie and I'll use a gutter word, grunge work without compensation and I recently -- I would [Page 44] prefer not to mention the person's name, but I had a recent conversation with a person who resigned from the panel because the individual was filled up with lots of work on cases that had no assets. And I do know that trustees are given the opportunity to turn down. I do know that everyone of the trustees who have described and complained about some of the work describe being a member of the panel as something that is professionally right, and that every once in a while a

case comes along where there are assets and the trustee is well-paid for the work that's done. I mean, the system doesn't work unless you do have individuals that will take the chafe along with the good stuff.

Q Could you, and would you be willing, it if were considered appropriate under the circumstances, to devote approximately 50 hours of pro bono work to serving as a panel attorney?

A Yes.

Q In addition to the courses that I have already specified for the record that you would be willing to take?

A Yes, and the only proviso that I would make is that such a workload be something that I could work into the other work. In other words, I don't want

to take a month off, and then I don't pay anybody, because I don't make any money.

Q. Right.

THE COURT: Well, this Court does not have anything to do with who is, or is not, considered to be a panel attorney by [Page 45] the U.S. Trustee's Office.

MR. SILVESTRI: I understand that.

THE COURT: So, in terms of pro bono work, the only ability to do that within the bankruptcy system that I know of is to represent debtors not to serve on the panel of trustees because they're appointed by the U.S. Trustee's Office and I don't even know all of the ramifications as to how a person becomes or doesn't become a member of that panel. But I do know --

MR. JOHNSON: And representing a debtor is something that I'm sure Mr.

Silvestri would also be willing to do, or be willing to do in substitution for the trustee. I don't know the bankruptcy system, and as I indicated, I have not called Mr. Goldring. I didn't think it was appropriate at this point in time to check on that, but if a debtor would require representation, I'm sure that that would be something that might be even better from the standpoint of pro bono work, because it would be something that Mr. Silvestri could probably adjust his practice to include.

Q It that correct, Mr. Silvestri?

A That's correct.

Q It that something that you would be willing to do, and you could do to the best of your ability if that were something that the Court ultimately decided on?

A Yes, and as you pose that question to me, you posed another [Page 46] question to me which is when I brought this up to you, you said to me, "How can you find the time to do that?" And what I said to you is well, "I've got this little sister that I have sibling rivalry with and over Christmas vacation," I said, "Hey, Sis, you're a marathoner, do you think that me, your older brother who's never run more than seven miles, could go the 26.2 in the Pittsburgh Marathon in May?" and she said, "Yes," and she gave me a training schedule and I completed it. I ran it, and the point I'm making is that if I can find time to run 55 miles a week, I can find some time to do something that would demonstrate to the Court that my professional head is in the right place. Something that I could

make amends of. Actually, I'm probably greedy in requesting this, because I might find a good case to work on even if it is for free. I wouldn't make money off of it, but I would make an intellectual advance in looking at a problem that perhaps I've never seen before.

THE COURT: What is your background in actual bankruptcy work, Mr. Silvestri? Have you had bankruptcy courses in a continuing legal education in bankruptcy?

MR. SILVESTRI: No, I have never had a bankruptcy course for noncredit. I have never had a continuing legal education course. Basically, what I have done is I have consulted with other practitioners. When I first began to become involved in bankruptcy cases, I usually did so with another practitioner

who is experienced. As I came to know [Page 47] other practitioners and I would have a que ion, I would do what the sole practitioner does who doesn't have a bankruptcy department down the hall in the law firm, is you go and ask someone. Quite frankly, a practice that I failed to follow when I undertook the matters involving Mr. Hakim and in this Court. I mean, that's part of the failing.

Q Is there anything else you'd like to add to the record before I ask if you can stand down, sir?

A You're my lawyer. I'm going to do what you say.

Q Please stand down.

MR. JOHNSON: Thank you, Your Honor. At this time, I 'd only ask the Court to consider this: I would ask the Court to consider letting Mr. Silvestri register

for and take those courses to arrange to represent debtors. And I would ask the Court to hold in abeyance and decision concerning a monetary sanction until he can devote those 50 hours of pro bono work, and then to revisit this issue very briefly, and give me the opportunity to make two arguments. The first of which will be to vacate any order for monetary sanctions. And I guess I should probably leave it at that. With that, Your Honor, if there are no questions, I would like to thank you for your patience, and for you thoughtful questioning, and at this time Mr. Silvestri rests.

THE COURT: All right. Thank you very much.

MR. JOHNSON: Okay. Thank you.

[Page 48]

THE COURT: I'll take the matter under advisement. These two exhibits that you gave me, shall I just include as part of the record under seal?

MR. JOHNSON: Yes, that's fine. If you could do that, that's fine.

THE COURT: All right. The others that I looked at but were not made part of this record, I think have been adequately described on record. Do you wish to make those part of the record under seal?

MR. JOHNSON: No, I -- that's why I asked him to describe them. I think that's sufficient.

THE COURT: All right. The records of these proceedings will be sealed. The clerk has the procedure by which the tape will be sealed. I may unseal it for purposes of listening to it. When I get

around to actually considering this matter, if for any reason you need to listen to it, Mr. Johnson or Mr. Silvestri, I will upon appropriate order make it available to you for listening. I will not authorize copies. However, until this decision is down, and you decider whether or not you want to use it for appeal purposes.

MR. JOHNSON: Thank you, Your Honor.

THE COURT: All right. We're excused.

* * * * *

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CERTIFICATION

I, Annette Papp, certify that the foregoing is a correct transcript to the

best of my ability, from the electronic sound recording of the proceedings in the above entitled matter.

February 23, 1994

/s/ Annette Papp
J&J COURT TRANSCRIBERS, INC.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Re:	)	Bankruptcy No.
	)	88-01186 JKF
VIRGINIA MANSIONS	)	
APARTMENTS, INC.,	)	Motion No.
	)	JAJ-1
Debtor	)	9013.4(6)(c)
	)	
	)	Related to
	)	Motion Nos.
	)	88-5359-M &
	)	89-1373-M

MOTION TO ALTER OR AMEND THE JUDGMENT

And now comes John M. Silvestri, through counsel, and files the within Motion to Alter or Amend the Judgment of the Order dated November 12, 1993 pursuant to Bankruptcy Rule 9023, incorporating by reference Federal Rule of Civil Procedure 59, and respectfully represents as follows:

1. In Paragraph 1 of the Order dated November 12, 1993, this honorable court ordered Silvestri to attend at

twelve hours of continuing legal education (CLE) courses specializing in bankruptcy, of which three hours "must involve involuntary bankruptcies"; and in Paragraph 5 of the Order dated November 12, 1993, this honorable court ordered that Silvestri "shall not to represent any involuntary petitioning creditors and involuntary debtors in the Western District of Pennsylvania" until such time as Silvestri completes the aforementioned three hours of CLE focusing in the area of involuntary bankruptcies.

2. Following the hearing on the imposition of sanctions, Silvestri, looked for CLE and ethics courses relating to bankruptcy.

3. In fact, Silvestri found an eleven and one half hour CLE course

entitled "Basics of Bankruptcy & Reorganization" conducted by the Practicing Law Institute in New York (Pennsylvania does not require CLE in substantive areas of the law, and thus one must go out of state to obtain CLE course offerings). A copy of the brochure is attached.

4. Silvestri registered and attended said course on November 8 and 9, 1993. A copy of the payment receipt for the CLE course is attached.

5. This CLE course only contained twenty minutes on involuntary bankruptcies; see the brochure page entitled "Program Schedule" under the topic of "First Day" for the time segment "11:00-11:20".

6. After Silvestri's receipt of the Order dated November 12, 1993, Silvestri

further investigated CLE offerings involving involuntary bankruptcy. Silvestri found out that the Practicing Law Institute offers only two other courses in the substantive area of bankruptcy, one entitled "Chapter 11 Reorganizations" for eleven hours of CLE credit and another entitled "Advanced Bankruptcy Workshop" for twelve hours of CLE credit, and that neither of these courses specifically include material on the involving involuntary bankruptcies. A copy of the brochure for these CLE courses is attached.

7. Silvestri also contacted the American Bar Association's "Business Law Section" (which includes the area of bankruptcy) and "Professional Education Department" and learned that the only CLE offering currently scheduled in the area

of bankruptcy is entitled "Advanced Bankruptcy" on May 26 and 27, 1994 and the preliminary outline does not include any material on involuntary bankruptcies. The Chairman of this course is Bankruptcy Judge Jack Schmetterer from Chicago and the American Bar Association contact person is Edith Siler of (312) 988-6199.

8. It is believed and therefore averred that it may be impossible for Silvestri to find three hours of CLE courses involving involuntary bankruptcies within twelve months if the Practicing Law Institute provides only twenty minutes of CLE course time involving involuntary bankruptcies out of thirty-four and one-half hours of bankruptcy course time offered and the American Bar Association has no pending

bankruptcy course offerings which include time devoted to involuntary bankruptcies.

9. Furthermore, Paragraph 5 of the Order dated November 12, 1993 may be interpreted as partially suspending Silvestri from the practice of law, and it is respectfully submitted that (a) Bankruptcy Rule 9011, permitting sanctions for a violation of the rule, does not expressly permit suspending or partially suspending an attorney from practicing law; (b) 28 U.S.C. §1334, granting original jurisdiction to the district courts for matters arising under the Bankruptcy Code, does not expressly permit suspending or partially suspending an attorney from practicing law; (c) 28 U.S.C. §157, governing procedures under the Bankruptcy Code, does not expressly permit suspending or partially

suspending an attorney from practicing law; (d) Title 11 of the United States Code limits its regulation of attorneys practicing before the court on a case by case basis, rather than on a general basis, i.e., see 11 U.S.C. 327 and Bankruptcy Rule 2014; and (e) local bankruptcy rule 9010.1 does not expressly permit suspending or partially suspending an attorney from practicing law.

10. It is respectfully submitted that the general regulation and disciplining of attorneys practicing law in the bankruptcy court is governed by Local Bankruptcy Rule 9010.1, Local District Court Rule 1 and Local District Court Rule 22.

11. The admission of an attorney to practice law in the United States District Court for the Western District

of Pennsylvania by the United States District Court for the Western District of Pennsylvania is also the grant of the privilege for that attorney to practice in the United States Bankruptcy Court for the Western District of Pennsylvania, as a unit of the United States District Court for the Western District of Pennsylvania.

12. District Court Local Rule 22 does not permit a single judge to impose attorney discipline. Rather, District Court Local Rule 22, V. provides for complaints to be submitted to the Chief Judge, who shall refer a matter warranting investigation to appointed disciplinary counsel, and, after investigation, appointed disciplinary counsel makes a recommendation whether to proceed to a hearing. Any hearing to be

conducted is to be conducted before a panel of three judges.

WHEREFORE, It is requested that the Order dated November 12, 1993 by altered and/or amended by deleting Paragraph 5.

Respectfully submitted,

/s/ J. Alan Johnson

J. Alan Johnson, Esquire
Pa. I.D. No. 10504

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Counsel for John M. Silvestri

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:	)	
	)	
VIRGINIA MANSIONS APARTMENTS, INC.,	)	
Debtor.	)	
	)	
JOHN M. SILVESTRI,	)	Civil Action
Appellant,	)	No. 94-145
vs.	)	
JOSEPH BERNSTEIN, Trustee,	)	Bankruptcy No. 88-1186 JKF
Appellee.	)	

A F F I D A V I T

JOHN M. SILVESTRI does hereby depose and state as follows:

1. Since the Bankruptcy Court Order dated December 13, 1993 was entered, I have made a diligent search for continuing legal education programs concerning the substantive area of bankruptcy in general and the sub-topic of involuntary bankruptcies in particular.

2. I am a member of the American Bar Association.

3. The substantive area of bankruptcy is within the more general area of the American Bar Association's "Section of Business Law". The American Bar Association's "Section of Business Law" is having its spring meeting from April 7 through April 10, 1994, and this will include various committees of the "Section of Business Law". The program brochure for this spring meeting describes the following committee structure, business and programs:

a. There are thirty-six standing committees. Two of these committees, by their name, indicate they deal with the substantive area of bankruptcy, i.e., the "Business Bankruptcy

Subcommittee" and the "Consumer Bankruptcy Subcommittee".

b. There are six ad hoc committees. One of the ad hoc committees deals with the "Operation Of Trust Indentures In Bankruptcy" and the other deals with "Partnerships In Bankruptcy".

c. There are two task forces. No task force deals with bankruptcy.

d. There are thirty-six programs having continuing legal education accreditation. The names of three programs indicate they are in the substantive area of bankruptcy, i.e., "Government Claims & Bankruptcy", "Partnership

Problems In Reorganization & Bankruptcy: Solutions And Proposed Amendments To The Bankruptcy Code" and "When Fixing The Balance Sheet Isn't Enough: Operating A Company In Chapter 11". None of them indicate that there will be discussion on the topic of involuntary bankruptcies.

A copy of the portion of the brochure setting forth the committee meetings, programs at a glance and the hotel reservation form which designates the sponsorship is attached as Exhibit "A".

4. As is set forth in the Motion To Alter Or Amend The Judgment, at Paragraph 5 (Docket Entry 363), I attended a continuing legal education course entitled "Basics Of Bankruptcy &

Reorganization" sponsored by the Practicing Law Institute on November 8 and 9, 1993 in New York City. This course was for 11.5 continuing legal education credit hours, however, only twenty minutes of time was devoted to the sub-topic of involuntary bankruptcy. This twenty minute time segment was on November 8, 1993 from 11:10 a.m. to 11:30 a.m., and was entitled "Commencing A Case; Involuntary Chapter 7 & 11". A copy of the cover page and the program schedule is attached as Exhibit "B-1". After I attended this Practicing Law Institute course, I began receiving brochures for additional continuing legal education programs. These are described as follows:

a. The "Chapter 11 Business Reorganizations" program

provides for 11 hours of continuing legal education credit, but nothing in the program schedule indicates any specific presentation with respect to involuntary bankruptcies.

b. The "Advanced Bankruptcy Workshop" program provides for 12 continuing legal education credit hours, but none of the program's schedule indicates any specific presentations as to involuntary bankruptcies. A copy of the cover page of the program brochure and the respective program schedules for the above-mentioned "Chapter 11 Business Reorganizations" program and

the within-mentioned "Advanced Bankruptcy Workshop" program schedule is attached as Exhibit "B-2.

c. The "16th Annual Current Developments In Bankruptcy & Reorganization" program provides for 12.25 hours of continuing legal education credit, however, the program schedule does not indicate any discussion on the topic of involuntary bankruptcies. A copy of the cover page of the program brochure and the program schedule is attached as Exhibit "B-3".

d. The "Real Estate Workouts & Bankruptcies" program provides for 11 continuing legal

education credit hours, however, the program schedule does not indicate any discussion on the topic of involuntary bankruptcies. A copy of the cover page of the program brochure and the program schedule is attached as Exhibit "B-4".

e. The "Fraudulent Conveyances, Preferences & Valuation" program provides for 5.5 continuing legal education credit hours, however, the program schedule does not indicate any time on the topic of involuntary bankruptcies. A copy of the cover page of the program brochure and the

program schedule is attached as Exhibit "B-5".

5. The Law Education Institute, Inc. recently conducted a national legal education conference. There were six programs presented, one of which was in the substantive area of bankruptcy. Of twenty-eight topical presentations, not one was on the topic of involuntary bankruptcies. A copy of the cover page of the brochure and the program pages dealing with bankruptcy law are attached as Exhibit "C".

6. The American Law Institute - American Bar Association Committee On Continuing Professional Education recently sponsored a program entitled "Fundamentals Of Chapter 11 Business Reorganizations" over a two and one-half day time period. None of the program

topics indicate discussion on the topic of involuntary bankruptcies. A copy of the cover page of the brochure and the program topics are attached as Exhibit "D-1". An additional American Law Institute - American Bar Association program entitled "Fundamentals Of Bankruptcy Law" is to be presented over a two and one-half day time period from May 12 to May 14, 1994, and provides for 17 hours of continuing legal education credit. Of the 17 hours of continuing legal education credit, there is only a one-half hour segment on May 12, 1994 from 11:15 a.m. to 11:45 a.m. which would involve a discussion of involuntary bankruptcy petitions, and during this one-half hour segment both voluntary petitions and involuntary petitions are to be discussed. The copy of the cover

page of the brochure, the program schedule and a memorandum I received upon my inquiry as to the number of continuing legal education credits available for Pennsylvania is attached as Exhibit "D-2".

7. I have also reviewed the monthly Pittsburgh Legal Journals and various other brochures received with respect to mandatory continuing legal education in Pennsylvania which, up until this year, has been limited to ethics. Also, I made inquiries to the Allegheny County Bar Association, the Westmoreland County Bar Association and the Pennsylvania Bar Association, and all leads have been followed. I have found no course offerings on the specific topic of involuntary bankruptcies and there are no other courses known, other than those

disclosed above, which include as part of the program the topic of involuntary bankruptcies.

8. Finally, after the above language of this affidavit was dictated, I received a letter and a program agenda for a May 26 and May 27, 1994 program on bankruptcy sponsored by the American Bar Association. The actual program brochure has not been printed, but I was able to convince the person with whom I spoke to send the program information which has been sent to the brochure printer. The name of this program is "Critical Issues In Chapter 11 Bankruptcies" and there are six judges participating as panel discussion members. None of the program topics indicate that involuntary bankruptcy will be discussed. A copy of

the letter and information I received is attached as Exhibit "E".

I state upon personal knowledge or information and belief that the averments set forth in this Affidavit are true. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

/s/ John M. Silvestri
JOHN M. SILVESTRI, ESQ.
223 Fourth Avenue, Room 700
Pittsburgh, PA 15222-1713
(412) 391-0958; Pa. I.D. #21479

Date: March 28, 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:	)	
	)	
VIRGINIA MANSIONS APARTMENTS, INC.,	)	
Debtor.	)	
	)	
JOHN M. SILVESTRI,	)	Civil Action
Appellant,	)	No. 94-145
vs.	)	
JOSEPH BERNSTEIN, Trustee,	)	Bankruptcy No. 88-1186 JKF
Appellee.	)	

SUPPLEMENTAL AFFIDAVIT

JOHN M. SILVESTRI does hereby depose and state as follows:

1. Since the filing of my Affidavit dated March 28, 1994, I have received additional publications and brochures containing programs and seminars relevant to the substantive area of bankruptcy in general and the subtopic of involuntary bankruptcies in particular. These materials are described below and

attached as Exhibits "F", "G", "H" and "I".

2. The first material received was a program offered by LRP Publications advertising the Second Annual Consumer Bankruptcy Conference June 9 and 10, 1994 in Nashville, Tennessee and August 4 and 5, 1994 in San Francisco, California. The agenda set forth in the program brochure, marked as Exhibit "F", does not indicate there will be discussion on the subject of involuntary bankruptcies.

3. The second material received was a program offered by the National Business Institute on the topic of "How to Protect Secured Interests in Bankruptcy in Pennsylvania". The seminar agenda set forth in the program brochure, marked as Exhibit "G", does have topics entitled: "II. CLAIMS OF SECURED

CREDITORS" and "VI. EXPLORING OTHER CREDITOR REMEDIES". However, the explanations of these topics, and the other topics, do not indicate there will be discussion on the subject of involuntary bankruptcies.

4. The third material received was a publication entitled "The Allegheny Lawyer" which, at Page 7, marked as Exhibit "H", sets forth continuing legal education programs. One of the continuing legal education programs is entitled: "HOW, WHEN, WHY AND WHERE TO FILE: INVOLUNTARY BANKRUPTCY, VOLUNTARY AND INVOLUNTARY PETITIONS AND CONFLICTS OF INTEREST ETHICS ISSUES". This program is for two hours of substantive continuing legal education credit and one hour of ethics credit, however, there is no specification as to how much time is

to be spent discussing involuntary bankruptcy as distinguished from voluntary bankruptcy petitions and ethical issues. Discussion between me and a member of the Allegheny County Bar Association, Bankruptcy And Commercial Law Section (ACBA-B&CLS) revealed that the genesis of the program was a January, 1994 meeting of the ACBA-B&CLS at which either Bankruptcy Judge FITZGERALD or her law clerk made a statement that no one knows how to file involuntary bankruptcies and there should be a continuing legal education program on how to file involuntary bankruptcies. When I told the ACBA-B&CLS member disclosing this information to me about this proceeding, the ACBA-B&CLS member went on to state that the January, 1994 ACBA-B&CLS meeting discussion was not

confidential and that the member could not remember whether this program suggestion was made by the Bankruptcy Judge FITZGERALD or her law clerk, but the ACBA-B&CLS member was certain that the request for the program on the topic of involuntary bankruptcy was from Bankruptcy Judge FITZGERALD'S chambers. This ACBA-B&CLS member who attended the January, 1994 Allegheny County Bar Association, Bankruptcy And Commercial Law Section, meeting also advised of being a participant in follow-up meetings where follow-up discussion took place about implementing what was believed to be Bankruptcy Judge FITZGERALD'S suggestion. I was advised that one of the intended program participants stated that there was not sufficient information on the subject of involuntary bankruptcy

for it to be a program unto itself, and the group decided to include in the program, the subjects of filing voluntary petitions and ethical considerations in commencing bankruptcies. The member of the ACBA-B&CLS, who disclosed this information to me did not request confidentiality after I disclosed this proceeding. The decision not to identify this person in this affidavit was mine. However, if the Court deems it appropriate to know the source of my information concerning the genesis of the within-described program on involuntary and voluntary bankruptcy petitions, I will disclose the identity of the person with whom I communicated.

5. The fourth material received was the announcement of the Allegheny County Bar Association BENCH-BAR CONFERENCE,

scheduled for June, 1994. The agenda, at Page 5, marked as Exhibit "I", sets forth a three part program dealing with (a) employment and compensation of attorneys, (b) real property issues in bankruptcy, and (c) criminal bankruptcy fraud. There is no indication that the subject of involuntary bankruptcies will be discussed during this program.

I state upon personal knowledge or information and belief that the averments set forth in this Supplemental Affidavit are true. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

/s/ John M. Silvestri
JOHN M. SILVESTRI, ESQ.
223 Fourth Avenue, Room 700
Pittsburgh, PA 15222-1713
(412) 391-0958; Pa. I.D. #21479

Date: May 4, 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

IN RE:	)	
	)	
VIRGINIA MANSIONS	)	
APARTMENTS, INC.,	)	
Debtor.	)	
	)	
JOHN M. SILVESTRI,	)	Civil Action
Appellant,	)	No. 94-145
vs.	)	
JOSEPH BERNSTEIN,	)	Bankruptcy No.
Trustee,	)	88-1186 JKF
Appellee.	)	

MOTION FOR STAY PENDING APPEAL

Appellant, having filed an Appeal to the United States Court of Appeals for the Third Circuit, moves this Honorable Court for a stay of the part of the Bankruptcy Court Order which regulates Appellant's practice of law, and respectfully represents as follows:

1. The December 13, 1993 Bankruptcy Court Order appealed to the District Court stated, in relevant part:

> b....i. It is further **ORDERED** that, until John M. Silvestri has satisfied the three (3) hours of continuing legal education requirement regarding involuntary bankruptcy and prior to agreeing to represent any involuntary petitioning creditor(s) or involuntary debtor(s) who seek his representation in this Court, John M. Silvestri shall disclose to the potential client(s) the requirement that he engage in continuing legal education focusing on involuntary bankruptcy law.

2. This provision of the December 13, 1993 Bankruptcy Court Order was a modification of the November 12, 1993 Bankruptcy Court Order, which actually partially suspended Appellant from practicing law in the area of involuntary bankruptcies, said November 12, 1993 Bankruptcy Court Order stating in relevant part:

> 5. Until John M. Silvestri has taken the three (3) hours of

> continuing legal education focusing in the area of involuntary bankruptcies, he shall not represent any involuntary petitioning creditors or any involuntary debtors in the Western District of Pennsylvania.

3. One of the issues presented on appeal (also, presented to the Bankruptcy Court through the Motion To Alter Or Amend The Judgment of said November 12, 1993 Bankruptcy Court Order) was that a single trial judge does not have the power to determine the fitness of an attorney to practice law, and that a judge does not have the power to impose discipline or regulate attorney-client affairs.

4. This issue was not addressed by the District Court in the District Court's denial of the appeal which affirmed the December 13, 1994 Bankruptcy

Court Order; this issue was never addressed by the Bankruptcy Court.

5. It is respectfully submitted that the regulation of attorney-client affairs in the practice of law does not function to deter conduct as contemplated by Bankruptcy Rule 9011, and that such regulation of an attorney's fitness or privilege to practice law is solely governed by applicable rules relating to bar admission and discipline.

6. Appellant's legal research did not disclose a case where any other judge utilized either Bankruptcy Rule 9011 or Federal Rule of Civil Procedure 11 to suspend, partially suspend or otherwise regulate attorney-client relations in the practice of law, and it was anticipated that this issue would be addressed by the

District Court, as a case of first impression.

7. As a case of first impression, the trial court's exercise of authority, in substitution for authority reposed in the full District Court, is especially significant because the District Court's Local Rules have been drafted to deal with attorney discipline through procedures and mechanisms which include: (a) the reporting of misbehavior to the Chief Judge, (b) the conduction of an investigation if the Chief Judge deems it appropriate, and (c) the convening of a hearing, if warranted by the investigation, which hearing may not include the complaining judge as part of the hearing panel; see W.D.PA.LR 83.5.1 and W.D.PA.LR 83.6.5 (formerly known as

Local District Court Rule 1 and Local District Court Rule 22.V).

8. It is submitted that the intention of the drafters of these Local Rules was designed, among other things, to guard against the capricious decision of an individual judge that an attorney, with whom the judge may not agree, is not fit to practice law, and thus should be disciplined or restricted.

9. Because of the importance of this issue (due to the chilling effect which follows any departure from the established rules), and because of considerations of practicality and workability (will other judges who learn of this new approach to sanctioning under Rule 9011 and Rule 11 begin fashioning a myriad of practice restrictions and attorney-client regulations which may

override the bar admission and attorney discipline policies and procedures), it is respectfully submitted that paragraph "b. 1." of the December 13, 1994 Bankruptcy Court Order and paragraph "5" of the November 12, 1994 Bankruptcy Court Order be stayed pending appeal to the Third Circuit.

10. As of yet, Appellant has been unable to fulfill the requirement of completing "three (3) hours of continuing legal education focusing in the area of involuntary bankruptcies" because the only program known to have been offered only provided for two hours of continuing legal education, and there are no known future programs, either as its own course or as a part of a course, which will provide for the additional hour required.

Wherefore, it is requested that paragraph "b. i." of the December 13, 1994 Bankruptcy Court Order and paragraph "5" of the November 12, 1994 Bankruptcy Court Order be stayed pending appeal to the Third Circuit.

/s/ John M. Silvestri
JOHN M. SILVESTRI, ESQ.
Appellant
223 Fourth Avenue, Room 700
Pittsburgh, PA 15222-1713
(412) 391-0958; Pa. I.D. #21479

Date: August 1, 1994

ATTORNEYS AT LAW

BERNSTEIN AND
BERNSTEIN, P.C.

August 4, 1994

The Office Of the Clerk
United States Court of Appeals
for the Third Circuit
21400 United States Courthouse
601 Market Street
Philadelphia, PA 19106-1790

ATTN: Susan Acerba, Deputy Clerk

Re: Docket No. 94-3416
Silvestri vs. Bernstein
D.C. Civil No. 94-cv-00145

Dear Ms. Acerba:

I have received my copy of your letter of August 1, 1994, which was addressed to John M. Silvestri, Esquire.

I was the Chapter 7 Trustee in the underlying bankruptcy case of Virginia Mansions, Inc. I have been discharged from my duties and my obligations in the bankruptcy case.

Neither I nor the bankruptcy estate is involved in the current and ongoing litigation which involves John M. Silvestri, Esquire. Accordingly, it is not my intent to participate in the proceedings. Please remove me from the service list.

Thank you for your consideration.

Respectfully submitted,

BERNSTEIN AND BERNSTEIN, P.C.
/s/ Joseph J. Bernstein
Joseph J. Bernstein
DIRECT DIAL: (412) 456-8118